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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF OREGON

3  
4 THE HON. ANN L. AIKEN, JUDGE PRESIDING

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7 UNITED STATES OF AMERICA, )  
8 Government, )  
9 v. ) No. 06-60070  
10 KEVIN TUBBS, )  
11 Defendant. )  
12 \_\_\_\_\_ )

13  
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 EUGENE, OREGON

16  
17 THURSDAY, MAY 24, 2007

18 PAGES 1 - 160

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PROCEEDINGS

THURSDAY, MAY 24, 2007

THE CLERK: This is the time set for Criminal  
06-60070, United States of America versus Kevin Tubbs,  
imposition of sentence.

THE COURT: Counsel, before we begin, I want to  
tell you that I need to leave at about 10 minutes to 11:00.  
I have a speaking engagement that's been long-standing,  
probably close to nine months or a year, and that's just how  
today needs to go. So we'll just take a break from 11:00  
to, I would say, 12:30, and then come back and I will take  
an earlier -- a break earlier in the afternoon. But that's  
the schedule we need to have for today, so both sides should  
planning accordingly. All right?

Mr. Engdall.

MR. ENGDALL: Good morning, Your Honor. With the  
court's permission, I would ask to be allowed to remain  
seated during my presentation so I can run the PowerPoint  
and also be heard.

THE COURT: For all counsel, because of the  
microphones, I have no difficulty with sitting. You don't  
have to ask permission. That's fine.

MR. ENGDALL: Thank you, Your Honor.

May it please the court, the government's  
presentation this morning will include some brief opening

1 remarks by myself, obviously, and then we'll have a short  
2 PowerPoint presentation which will highlight a little bit of  
3 the defendant's background, some of his protest activities  
4 at the 1995 Warner Creek protest where he met several of his  
5 coconspirators. There will be a brief overview of the  
6 arsons in which he was a participant and a special emphasis  
7 on the Cavel West arson.

8 Then at the conclusion of that PowerPoint  
9 presentation, I will provide the court with the government's  
10 rationale for its sentencing recommendation and make that  
11 recommendation, also with argument for our sentencing  
12 guidelines adjustments.

13 And at the conclusion of that, Your Honor, there  
14 are two individuals, there are two forest service employees  
15 who were working at the Oakridge Ranger Station at the time  
16 of the arson. They have requested to simply address the  
17 court as victims in that particular arson. So with the  
18 court's permission, we would be asking to allow that to  
19 occur.

20 That being said, my comments about the defendant  
21 are that --

22 THE COURT: Let me interrupt for just a minute.

23 MR. ENGDALL: Oh. Yes, Your Honor.

24 THE COURT: I would just like to know what your  
25 expectations are. I'd like to make sure we are going to be

1 able to get this done today. If we aren't, I'm going to  
2 need to make some accommodations with other schedules.

3 MR. FRIEDMAN: I'm confident, Your Honor, that we  
4 will be able to finish today. I may have one witness. I  
5 may decide not to call him. And I have got a couple short  
6 videos to show you, and I think there will be one  
7 individual, one family member that will be speaking. I  
8 think our presentation probably will take about two hours,  
9 two and a half hours at most.

10 So depending upon the amount of time that  
11 Mr. Engdall takes, it may be appropriate to start  
12 immediately or to start right after your break.

13 THE COURT: Okay. Go ahead.

14 MR. ENGDALL: Thank you, Your Honor.

15 THE COURT: Um-hmm.

16  
17 MR. ENGDALL: Kevin Tubbs was an active  
18 participant in at least 14 arsons, and prior to becoming a  
19 serial arsonist, he followed the path of civil disobedience  
20 and simple assault as a PETA agent, PETA meaning People for  
21 the Ethical Treatment of Animals. He spent many days  
22 dressed in animal costumes and provoked business executives  
23 by throwing cat excrement and blocking their passage.

24 (Reporter interrupted.)

25 MR. ENGDALL: He spent many days dressed in animal

1 costumes and provoked business executives by throwing cat  
2 excrement and blocking their passage.

3 His role throughout the conspiracy was not that of  
4 a leader as defined in the sentencing guidelines section  
5 3B1.1(a), but more of an organizer pursuant to section  
6 3B1.1(c).

7 He could also be described as catalyst in the  
8 conspiracy in that he very often participated -- excuse  
9 me -- precipitated arsons by enlisting others to do the  
10 heavy lifting. He was also a facilitator. According to  
11 Stan Meyerhoff, while at the 2000 or 2001 E-LAW conference  
12 in Eugene, Mr. Meyerhoff couldn't remember exactly which  
13 one, Mr. Tubbs arranged for a meeting with Captain Paul  
14 Watson of the Sea Shepard vessel, which at the time, Watson  
15 provided Mr. Meyerhoff with a \$1,000 in cash for supplies  
16 that Meyerhoff understood would be used for his work -- to  
17 continue his work as an arsonist.

18 Again in September of 2001, Mr. Tubbs and William  
19 Rodgers provided Meyerhoff with another \$1,000 and a police  
20 scanner to travel to Minneapolis, Minnesota and instruct Ian  
21 Wallace on how to build incendiary devices and how to plan  
22 direct actions.

23 Throughout the conspiracy, Mr. Tubbs provided  
24 equipment used in several of the arsons. His van, two-way  
25 radios, and police scanners were utilized in more than one.

1 He also researched targets by himself, completed  
2 reconnaissance of the targets, and then would contact other  
3 coconspirators and encourage them to join him in the action.  
4 The Cavel West arson was such an action.

5 He also made himself available to assist others in  
6 arsons. He made certain that his role, however, was one in  
7 which the least amount of risk would be required. He was  
8 generally the driver or the lookout for the coconspirators  
9 who actually carried the fuel and the timers to the target.

10 While he was arguably the least courageous of the  
11 arsonists, he offered the group other talents and other  
12 services. Kevin Tubbs made false and stolen identification  
13 documents available to Family members during the life of the  
14 conspiracy and kept stolen identification documents up until  
15 the time of his arrest.

16 He told investigators that he found two pieces of  
17 identification for a Mr. Kevin Golitz, G-O-L-I-T-Z, that he  
18 kept from May 7th, 1998, when it was obtained by using a  
19 death certificate and request from the State of California.  
20 He kept that until the day of his arrest some seven years  
21 later.

22 He would also steal driver's licenses that were  
23 accidentally left at his place of employment, which was an  
24 adult bookstore in Springfield, Oregon. He provided  
25 coconspirator Darren Thurston with two of those driver's

1 licenses.

2 When he was arrested, he was found in possession  
3 with two other stolen Oregon driver's licenses. When Darren  
4 Thurston and Chelsea Gerlach were arrested, they too were in  
5 possession of stolen documents, identification documents,  
6 which they had received from Kevin Tubbs. He not only  
7 provided these identification documents to his  
8 coconspirators, but used false identification to register  
9 his own vehicle when it was used for arsons. The van that  
10 was used in the Cavel West arson was just such a vehicle.  
11 It was registered by Mr. Tubbs under the name of  
12 Ronald Calloway.

13 Kevin Tubbs claims that he completely withdrew  
14 from all actions in late 2001. While that may be factually  
15 accurate, it's not the complete story. Kevin Tubbs  
16 initially told investigators the fraudulent and stolen  
17 identification documents seized from him at the time of his  
18 arrest were only artifacts in his past life. Six months  
19 later, he admitted that he had been keeping the documents in  
20 case someone needed them for a direct action. He may have  
21 gone into retirement, but he remained ready to assist anyone  
22 who wished to continue with, as he put it, direct actions.

23 On December 10th, 2004, Kevin Tubbs reminisced  
24 with Jacob Ferguson during a consensual recording and stated  
25 he was closer to some of his coconspirators than he was with



1 his own family. Tubbs remained in contact with his  
2 coconspirators up until the time of his arrest, and that, in  
3 fact, enabled the government informant to locate Stan  
4 Meyerhoff, Chelsea Gerlach, Darren Thurston, and William  
5 Rodgers. He maintained contact with Stan Meyerhoff and  
6 visited with Meyerhoff in June and August 2005, only three  
7 months before their arrests.

8 He kept in touch with the comings and goings of  
9 Rebecca Rubin and was aware that she was routinely entering  
10 illegally, illegally reentering the United States from  
11 Canada. He had also been provided maps by Rebecca Rubin  
12 which showed the pathway to enter the United States and  
13 Canada by avoiding immigration inspection.

14 He maintained contact with Chelsea Gerlach and  
15 Darren Thurston and visited with them in December of 2004,  
16 he visited with Joseph Dibee in 2002, and he visited with  
17 William Rodgers in 2005, a short time before his arrest.

18 Also, within weeks of the arrest of Mr. Tubbs and  
19 William Rodgers, he told Jacob Ferguson where William  
20 Rodgers was actually residing in Arizona. In August of  
21 2004, Tubbs told Jacob Ferguson that he knew people in  
22 Canada who would be willing to help coconspirators -- the  
23 coconspirator and fugitive Josephine Overaker and help her  
24 with money and safe haven.

25 Mr. Tubbs continued to be a true believer in the

1 methods of violence against the government. On March 22nd,  
2 2005, only nine months before his arrest, he told  
3 Jacob Ferguson that he believed the protestors who simply  
4 locked themselves to the bridge at the Biscuit timber sale  
5 protest in Southern Oregon weren't doing it properly. He  
6 went on to say that a person such as himself should simply  
7 lock himself to the bridge, and when law enforcement  
8 arrives, he would blow himself up. He went on to say that  
9 it would certainly garner more publicity, and that if you  
10 loved your cause, you should be willing to die for it.

11 When discussing his life as an arsonist to  
12 Jacob Ferguson, he expressed that some things in his life  
13 were regrettable, but his participations in the arsons made  
14 it all worth it. Up until his arrest, then, this defendant  
15 remained a true believer in the ELF cause and ready to  
16 continue with violent acts.

17 He did this knowing full well the personal anguish  
18 uncontrolled fires can cause. In his sentencing memo, he  
19 relates the story of his home catching on fire and the pain  
20 and suffering he experienced when his own pets were injured  
21 and killed. He, unlike Mr. Meyerhoff, understood the  
22 inherent dangers of fire and the suffering that can result  
23 from uncontrolled conflagrations.

24 With that in mind, I'd like to begin our  
25 PowerPoint, Your Honor. This first slide just shows,

1 obviously, some photos of Mr. Tubbs throughout his life,  
2 references the aliases that he used during the conspiracy,  
3 Bob, Dog, and Ronald Calloway.

4 Thank you. Next.

5 Here's his family and educational background. He  
6 is a -- his father is deceased in 1990. He went to Humbolt  
7 State University as an exchange student. He got a  
8 baccalaureate in fine arts in 1991.

9 His employment history. When he was arrested, he  
10 was still working at the Castle Megastore in Springfield,  
11 Oregon.

12 Here's an arrest history that we have on him, and  
13 I would like the court to note the shoplifting arrest that  
14 occurred here in Springfield, Oregon, in December 2004. It  
15 indicates that he had police contact within a year of his  
16 arrest.

17 This is where Kevin Tubbs really got to meet and  
18 know some of the coconspirators of The Family, as we have  
19 come to know the name. He met Jacob Ferguson there,  
20 Mr. Dibee, William Rodgers, Josephine Overaker, and Lacey  
21 Phillabaum.

22 Next slide.

23 This slide, Your Honor, is a video clip that  
24 was -- it's a snippet from an activist film entitled  
25 *Pickaxe*. And in this video clip, you will hear Kevin Tubbs

1 speaking and actually being a spokesperson on the film. And  
2 near the end of the snippet, you will hear him give  
3 directions to others, which indicates that he had some sort  
4 of, not supervisory role, but certainly some minor  
5 leadership role.

6 (The videotape was played; not reported.)

7 MR. ENGDALL: This obviously was a film made about  
8 the Warner Creek protest and the individuals involved with  
9 that.

10 The next slide shows us his first arson. This was  
11 a solo arson at the Dutch Girl Dairy here in Eugene, Oregon,  
12 on Christmas Day, 1995. Mr. Tubbs decided that he was going  
13 to destroy some of the vehicles at that location. He  
14 spray-painted graffiti on the side of the vehicle. You can  
15 see it says, "Dairy equals death, ALF." He used three  
16 devices. He made those devices himself. They were  
17 two-liter bottles filled with accelerant, wrapped in duct  
18 tape. There were some matchsticks attached to the duct tape  
19 adjacent to one of the bottles and an incense stick that he  
20 lighted for the timer. Three devices were used. One failed  
21 to function. They were found by the -- I believe the  
22 employees the next morning, by the employees the next  
23 morning. The arson loss as a result to the fire of the  
24 trucks was slightly over \$15,000.

25 The next slide is the Oakridge Ranger Station,

1 which, as we know, occurred October 30th, 1996, where the  
2 forest service ranger station building was destroyed. Two  
3 devices were used. The devices that were used in this  
4 particular arson were one-gallon jugs filled with fuel with  
5 a soaked sponge. That sponge was soaked in -- in gasoline  
6 and diesel mix. You had matches attached to the sponge and  
7 then a punk going down the matches which lit the sponge  
8 which then caused the fuel in the one-gallon container to  
9 burn. This was his second arson. It was also unpopular  
10 with the local activists, so no claim was made.

11 Mr. Tubbs explained his role to the investigators  
12 and said that more -- that prior to this arson that he was  
13 approached by Mr. Ferguson and Ms. Overaker, and they simply  
14 wanted a ride to the Oakridge Ranger Station. He gave them  
15 a ride, assuming that they were just going to go and  
16 spray-paint graffiti on the building and leave. He had been  
17 to that building before. He and Mr. Ferguson had been  
18 involved in protests there and had glued locks. He was  
19 familiar with the building and with the area.

20 When the investigator spoke with Mr. Ferguson,  
21 Mr. Ferguson had a different take on the facts of that  
22 particular day. Mr. Ferguson and Ms. Overaker had just  
23 committed the Detroit Ranger Station attempted arson on the  
24 building and completed arson on the vehicle. They went over  
25 to see Mr. Tubbs. Mr. Ferguson and Mr. Tubbs were

1 acquainted. And Mr. Ferguson explained to Mr. Tubbs what he  
2 had done at the Oakridge Ranger Station, and Mr. Tubbs,  
3 according to Mr. Ferguson, wanted to get in on the action,  
4 was interested in it. They talked about where they could  
5 go. They both knew the Detroit Ranger Station, and so they  
6 decided that would be the target. According to  
7 Mr. Ferguson, Mr. Tubbs wanted to make the devices because  
8 it was important to Mr. Tubbs that those devices would work  
9 properly.

10 They gathered the materials. Mr. Tubbs did, in  
11 fact, construct the devices. And then they, on the night of  
12 October 30th, they drove to the Oakridge Ranger Station in  
13 West Fir, Oregon, just west of Oakridge.

14 On their way there, they stopped at the side of  
15 the road. They put the fuel in the containers. They put  
16 the containers in backpacks, backpacks of Mr. Ferguson and  
17 Ms. Overaker. And then they drove to the Oakridge Ranger  
18 Station. Mr. Tubbs parked the vehicle north of the station  
19 on a -- in a little side road or a spur and waited for  
20 Mr. Ferguson and Ms. Overaker to complete the task.

21 They -- the two of them, Ferguson and Overaker,  
22 went to the ranger station. They went around to the back of  
23 the ranger station, placed one of the devices in a Dumpster  
24 there for recycling paper, and came around to the east side  
25 of the building and placed one device there. They ran back



1 across the road, got into the vehicle wherein which  
2 Mr. Tubbs was waiting, and then they drove back to Eugene.

3 They stayed at Mr. Tubbs' house that night and  
4 discovered that -- the next morning that the arson had been  
5 successful. They waited for a short period of time, and  
6 then realized that the Eugene activist community was not at  
7 all pleased with the burning of the ranger station. This,  
8 of course, was around the time of the Warner Creek timber  
9 sale protest, and the activist community and the  
10 environmentalists had been successful in their legal  
11 argument to prevent the logging of that timber sale, and so  
12 they believed that this -- this arson was unnecessary and a  
13 clear provocation and detrimental to their efforts to work  
14 in a lawful manner to gain the results of their cause.

15 I think the next slide actually is a -- yes. This  
16 is a statement by Tim Ream who was a member of the activist  
17 community. This is a clip from *Cascadia Live*, which was a  
18 local television show. Weekly television show. This was a  
19 TV broadcast that was made shortly after the Oakridge arson,  
20 and it indicates how upset the legitimate activist community  
21 was about the arson at Oakridge.

22 (The videotape played; not reported.)

23 MR. ENGDALL: Next slide.

24 The next slide, Your Honor, shows two photographs.  
25 The one on the left is the device that was similar to the

1 one that was used at the Oakridge Ranger Station. This  
2 constructed device was never again used by this arsonist  
3 cell, The Family. It's the one-gallon jug with the sponge  
4 and the matches with the punk. The one on the right is, of  
5 course, the one we just saw moments ago. It was the device  
6 that Mr. Tubbs manufactured and created for that arson.

7 The reason why these slides are on here is because  
8 the investigators asked Mr. Tubbs about the Oakridge Ranger  
9 Station arson, and as I told you before, his story was that  
10 he simply was a driver. And Mr. Ferguson advised the  
11 investigators that Mr. Tubbs was actually the creator of the  
12 devices.

13 Curiously enough, when he was asked to describe  
14 the incendiary device that he made for the Echo Dairy arson,  
15 Mr. Tubbs described specifically the device on the left-hand  
16 side. He gave an exact description of the device that  
17 Jacob Ferguson said that he -- that Mr. Tubbs had assembled  
18 for the Oakridge Ranger Station.

19 We questioned the veracity of Mr. Tubbs'  
20 statement, and based upon what Mr. Ferguson told us the  
21 regarding the Oakridge Ranger Station and all the other  
22 arsons that Mr. Ferguson was able to advise us about, it's  
23 our belief that Mr. Tubbs, in fact, did create the devices  
24 that were used at the Oakridge Ranger Station.

25 This is the Cavel West arson. This is



1 Mr. Tubbs -- I would say Mr. Tubbs' arson in that Mr. Tubbs  
2 chose this target for the action. He had seen an article in  
3 a local newspaper, *The Register-Guard*, and learned that wild  
4 horses were being rounded up from public lands and were  
5 being slaughtered at the Cavel West horse meatpacking plant  
6 in Redmond, Oregon.

7 A couple of months prior to the arson, he drove to  
8 Redmond, Oregon, he tells us, with his dog. He decided at  
9 that time that this would be a good target. He returned to  
10 Eugene, Oregon. He met with Jacob Ferguson and Joseph  
11 Dibee, told them also about the target. He invited them to  
12 come see what he had seen, and all three went back to  
13 Redmond and walked around the plant, trying to decide what  
14 action could be done. Mr. Dibee believed that it could be  
15 burned by drilling large holes in the walls and pouring fuel  
16 into the walls.

17 Once they returned to Eugene, they discussed what  
18 type of manpower would be necessary and decided that more  
19 people would be needed other than just those three. It was  
20 at that time that Joseph Dibee suggested that he would  
21 recruit Jonathan Paul, and, in fact, that is what occurred.  
22 Paul agreed to participate in the arson. Jonathan Paul  
23 contacted Jennifer Kolar to help Jonathan Paul, and Paul and  
24 Kolar then went in to prepare the accelerant that was going  
25 to be used. This particular arson, they thought they would

1 use some homemade Napalm, and so Jonathan Paul and Jennifer  
2 Kolar went around and got as many glycerine-based bars of  
3 soap that they could. They cut the soap into little pieces,  
4 and they mixed it with the fuel mixture. They call this  
5 vegan Jello, which obviously was a blend of gasoline and  
6 diesel.

7 It was Mr. Dibee's job to prepare the timing  
8 device. On the night of the arson, they drove -- they all  
9 drove to Redmond, Oregon. They had a predesignated staging  
10 area where they parked, put on their dark clothing, their  
11 masks, their gloves. They did their radio checks. They  
12 also dug a hole at that location, so upon their return from  
13 the arson, they would take off their clothing, put the  
14 clothing into the hole, pour acid on the clothing, and cover  
15 the clothing with dirt. This was obviously to prevent  
16 detection by law enforcement officers.

17 They did travel, then -- after they were prepared,  
18 they traveled to Redmond, Oregon. They parked at the  
19 McDonald's restaurant parking lot where Mr. Tubbs had a  
20 radio and a scanner. He, as was typical for him, stayed  
21 back away from the risky business, and the other individuals  
22 approached the Cavel West meatpacking plant.

23 Mr. Dibee began to drill a hole in the wall of the  
24 Cavel West meatpacking plant. This was a concrete wall. As  
25 he drilled a hole, he would wait until the refrigeration

1 units would go on so as to muffle the sound of his drill.  
2 Once the hole was completed, he stuffed rags into the hole  
3 and put a bucket of fuel under the rags and prepared the  
4 timing device.

5 In the meantime, two other devices were placed in  
6 and around the area, and as they were being placed, the  
7 other devices were being placed, Mr. Dibee prepared the  
8 timing device. Well, the timing device preignited, and the  
9 flames began. He was almost burned. He and Jennifer Kolar  
10 called the signal to abort the arson. It was heeded by the  
11 other individuals, by Mr. Ferguson and Mr. Paul. They ran  
12 back to the van, got in the van, drove directly back to  
13 their staging area. They did, in fact, take off their dark  
14 clothing and their masks and gloves and caps, put them in  
15 the shallow hole that they dug. They did, in fact, pour  
16 acid on them, cover them with dirt, and returned to Eugene.

17 The loss as a result of this arson was over a  
18 million dollars.

19 Next slide, please.

20 This slide just shows Mr. Tubbs' involvement. He  
21 selected the target, he invited the team members, he  
22 assisted in planning in the attack and participated in the  
23 arson.

24 Next slide.

25 Sign at Cavel West. This is the -- an aerial

1 photograph, Your Honor, of the plant prior to the arson,  
2 itself. A series of buildings east of a railroad track. Up  
3 to the top of the page is a railroad track. McDonald's  
4 restaurant would be off the picture but over on the  
5 left-hand side on the highway that runs directly through  
6 Redmond, Oregon, Highway 97.

7 This is a photo, a video taken by a Redmond police  
8 officer, another first responder photo similar to the one at  
9 the Joe -- the Romania Chevrolet Truck Center. So this was  
10 taken as the Redmond police officer was dispatched to a fire  
11 alarm occurring at the Cavel West meatpacking plant.

12 There is no sound on this video.

13 That is the wall where the -- the device that  
14 Mr. Dibee was working on that prematurely activated.

15 The next clip, Your Honor, shows the suppression  
16 effort of the Redmond Fire Department.

17 Go ahead.

18 There also is no sound on this one, but I should  
19 advise the court that this becomes significant because the  
20 suppression effort required a vast amount of water, and as a  
21 result of that, the Redmond water supply was jeopardized.  
22 It used a considerable amount of the reservoir for the  
23 city's water supply to finally suppress this arson.

24 Next slide.

25 This is the aftermath photo. This is an aerial

1 photo of the meatpacking plant. The fire that we saw from  
2 the police officer's patrol vehicle occurred at the -- well,  
3 on the right-hand side, there are two main burned-out hulks  
4 of buildings. It's the one on the right-hand side. And if  
5 you will look at the bottom portion of that, there's a white  
6 wall with, it looks like, three windows, and to the left of  
7 the three windows, the burn and char marks. That is the  
8 location of the police officer's video.

9 Another shot of that. Again, the photograph on  
10 the lower right-hand corner is the location of the  
11 incendiary device placed by Mr. Dibee that preignited.

12 Next slide, please.

13 Close-up of that again. You will see the hole in  
14 the wall on the right-hand photograph. Just below the hole  
15 in the wall was found a pair of pliers, tools utilized by  
16 the arsonists, by Mr. Dibee and Mr. Tubbs and the rest of  
17 the conspirators of that particular arson.

18 Later, as -- as the fire was -- or the remainder  
19 of the fire was being dug out, they found, actually, a drill  
20 bit that was associated with the drill that Mr. Dibee had  
21 used to drill that hole.

22 Next slide, please.

23 In the back side of the meatpacking plant there  
24 was a shed. That is where one of the failed devices was  
25 found. During the -- during the -- at the time of the

1 arson, there was actually an employee that lived in a nearby  
2 building. He was present at the time of the arson, or he  
3 was in residence at that building the night of the arson.

4 I show -- the next slide, please -- the types of  
5 devices that were located there. There is a jug. This has  
6 the mechanical timer device, common mechanical kitchen clock  
7 that was attached to a battery and to a lightbulb. The  
8 lightbulb had the glass taken off so that the bare filament  
9 was exposed. When the timer pushed two wires together when  
10 it got to zero, the two wires reclosed the circuit, caused  
11 electricity to flow from the nine-volt battery. It would  
12 turn on the lightbulb. The lightbulb filament, being  
13 exposed, would heat up. The light bulb filament would touch  
14 matches. The matches were adjacent to a sponge soaked in  
15 accelerant. That sponge would burn and then cause the  
16 melting and the burning of the accelerant in the one-gallon  
17 jug.

18 Next slide.

19 This is a black bucket that was utilized by the  
20 defendants at the time -- during the course of this  
21 particular arson. This is a bucket that contained vegan  
22 Jello, and you can look at the bottom of that, black -- the  
23 paint was scraped as if to stir that vegan Jello. The  
24 buckets were spray-painted black so that it would be more  
25 difficult to detect. Sometimes there was -- during the



1 course of this conspiracy, sometimes they were painted  
2 black. Sometimes they were just covered with black plastic  
3 bags. This -- the vegan Jello here was dumped out and  
4 spread all around the area so that it would serve as an  
5 additional fuel source for the device that we just observed,  
6 and in the picture on the left-hand side, you can still see  
7 the device under that piece of plywood. So when that device  
8 under the piece of plywood, had it activated, ignition would  
9 have caused the vegan Jello to burn and caused the entire  
10 shed to become engulfed in flames.

11 This is a photograph of the aftermath of the fire.  
12 They had fuel storage tanks there. They were not  
13 jeopardized by the fire directly because of the successful  
14 fire suppression effort of the Redmond Fire Department. The  
15 arrow in the lower right-hand corner indicates the fire  
16 damage and how close it came to those fuel storage  
17 facilities.

18 This is the communique that was issued as a result  
19 of -- after the Cavel West arson, after it was determined  
20 that there were no complaints by the activist community, and  
21 presumably no one had been injured at that time. And in  
22 pertinent part, that communique reads, "The Animal  
23 Liberation Front paid a visit to Cavel West horse murdering  
24 plant." They describe what they did there. "Three  
25 electrical timing incendiary devices that would bring a

1 screeching halt to what countless protests and  
2 letter-writing campaigns could never stop."

3           So this was clearly an exasperated, desperate  
4 attempt by these conspirators to do something because  
5 legitimate means were not accomplishing their goals, so they  
6 decided to burn down the Cavel West meatpacking plant. It  
7 also talks about the premature ignition, where it states,  
8 "Unfortunately, as the battery was being connected to the  
9 device at the refrigeration unit, a spark started and  
10 started the entire area on fire." This is significant, Your  
11 Honor, I think, because not only were these arsons dangerous  
12 to the businesses, dangerous to the people that lived at or  
13 near those businesses, dangerous to the people that were  
14 called upon to suppress those fires, they were dangerous to  
15 these arsonists as well. The arsonists were amateurs. They  
16 didn't know what dangers they were being -- they were  
17 causing as a result of these devices, and the devices are  
18 uncontrollable. While they thought themselves to be  
19 somewhat of an expert, they could go off at any time. Even  
20 the ones that we saw in shed that failed to ignite, with the  
21 workers and the fire suppression effort going on, those  
22 could have activated at any time. They certainly put  
23 everyone in the area in danger.

24           The last quote in the -- that we have highlighted  
25 in this communique identifies the amount of damage that's



1    been done and correctly states that the entire plant is  
2    currently closed and out of operation. In fact, that plant  
3    was never opened again. It was -- the business was closed.  
4    The employees of that business lost their jobs and had to  
5    find other work. So it was devastating personally to the  
6    employees, it was devastating to the business of the Cavel  
7    West meatpacking plant, and devastating to the community for  
8    the loss of jobs.

9               Next slide.

10              This is the BLM wild horse corral. Mr. Tubbs was  
11    there. He, again, was the driver and lookout. He had  
12    radios, scanners. This was a direct attack on the Bureau of  
13    Land Management for their rounding up of wild horses off of  
14    public lands. This occurred November 30th, 1997, in Burns,  
15    Oregon. Five devices were used during the course of this  
16    arson. Two failed to function. One of the devices that  
17    failed to function was in a tractor, and that's in the upper  
18    right-hand corner of our slide.

19              The people involved in this were obviously  
20    Mr. Tubbs, Josephine Overaker, Rebecca Rubin, the deceased  
21    William Rodgers, and Mr. Jacob Ferguson. The lower  
22    photograph clearly shows the aftermath and the devastation  
23    of the fire. The loss to this fire was \$120,000.

24              The communique, in pertinent part, reads, "Efforts  
25    to halt the BLM's illegal and immoral business of rounding

1 up wild horses from public lands and funneling them to  
2 slaughter."

3 This was a direct attack on the government, a  
4 direct attack on the Bureau of Land Management and the  
5 facility there in Burns, Oregon.

6 The second highlighted portion of this communique  
7 reads, "The practice of rounding up and auctioning wild  
8 horses must be stopped. The practice of grazing cattle on  
9 public lands must be stopped. The time to take action  
10 now" -- "is now."

11 This is clearly retaliation for what the  
12 government was in the business of doing at the time. They  
13 had to manage the wild horse population on public lands, and  
14 they also, of course, coordinated cattle grazing on public  
15 lands. This, again, is a direct attack on the policies and  
16 business of the government, and clearly meant to intimidate,  
17 coerce the government and its -- its operation.

18 Next slide, please.

19 This is the animal plant and health inspection  
20 service building. This is in Olympia, Washington. This was  
21 part of a double whammy. Not quite as large as the  
22 Jefferson Poplar Farm/University of Washington double  
23 whammy, but certainly as devastating to these particular  
24 locations. This was a research plant operated by the  
25 government.

1           Mr. Tubbs, Mr. Ferguson, and Mr. Rodgers had  
2 discussed attacking this particular plant -- this particular  
3 location, excuse me. They believed that APHIS was involved  
4 with destruction of animals. They had heard that a cougar  
5 had been killed by this particular operation. In fact, the  
6 Animal and Plant Health Inspection Service was -- its  
7 purpose was to preserve life, and not to destroy it, so the  
8 conspirators missed their mark on this one.

9           On the day of the arson, Mr. Ferguson, Mr. Tubbs,  
10 and Ms. Overaker traveled to Olympia, and in preparation for  
11 the arson, they went to Home Depot to steal the five-gallon  
12 buckets that they needed and the sponges. Ms. Overaker went  
13 in. She was arrested for shoplifting for those items.  
14 Mr. Ferguson and Mr. Tubbs waited in the van. As they saw  
15 her being taken away from -- it was a big box store. I'm  
16 not sure it was a Home Depot. I think it may have been a  
17 Lowe's. The police arrested Ms. Overaker, took her to the  
18 police station. Mr. Ferguson and Mr. Tubbs waited there.  
19 They obviously couldn't get their supplies. They went off  
20 to meet with Mr. Rodgers. They -- their van broke down.  
21 They were unable to get Mr. Rodgers and find Mr. Rodgers.

22           They also were supposed to meet up with Joseph  
23 Dibee who was to provide the timing devices for this  
24 particular arson. As Mr. Tubbs and Mr. Ferguson were  
25 waiting in the parking lot with their broken down van trying

1 to repair that, Mr. Rodgers walked up and contacted them,  
2 and by that time, Ms. Overaker had been released from the  
3 police department, and she was also there. They were  
4 shocked to see Ms. Overaker, told her that she must leave,  
5 again, the alibi that she had been identified by police  
6 stealing components that clearly would have been used in  
7 this arson. So she was told to leave there immediate  
8 presence. She did that, in fact.

9 That left Tubbs, Ferguson, and Rodgers without  
10 timing devices. Mr. Dibee never did show up. They went to  
11 a local market. They purchased sort of a wax encased --  
12 what do you call it? -- a barbecue lighter. They went to  
13 the location of APHIS. They placed the devices around  
14 APHIS, the three devices, which are basically containers of  
15 accelerant. They hand lit those devices and left the area.

16 In the meantime, the other target, referred to as  
17 ADC, another government agency, was burned by the second --  
18 the second cell, the second group of arsonists. And both --  
19 both -- both locations were burned to the ground that  
20 particular night. The arson loss at the Animal and Plant  
21 Health Inspection Service was more than a million dollars.  
22 Mr. Tubbs and Mr. Rodgers remained in Olympia. Mr. Ferguson  
23 returned to Eugene that night.

24 Next slide, please.

25 This is the Bureau of Land Management wild horse

1 corral in Rock Springs. Again, it occurred October 11th,  
2 1998. This was, of course, as we recall, the secondary  
3 target. The primary target was going to be the Vail arson.  
4 It's simple. Mr. Tubbs was part of this arson attempt. He  
5 was the driver and a lookout. The other individuals,  
6 Ms. Rubin, Mr. Meyerhoff, Mr. Ferguson, Ms. Overaker,  
7 Mr. Rodgers, and Ms. Gerlach approached this facility. They  
8 set the containers of fuel on -- near the buildings and on  
9 the vehicles. But they -- as they released the horses,  
10 there was a stampede that ran to the neighbors. The police  
11 were called. They had to abort the arson. They took the  
12 timing devices, hid them in the rocks, which the photograph  
13 of the rooky area is just -- is in the lower right-hand  
14 corner, hid the timers, went and got into the van, and left  
15 the area.

16 Next slide, please.

17 Here's the communique on that one, and in  
18 pertinent part, "The fact that BLM hasn't informed the  
19 public about this event only shows that BLM wants to  
20 continue their business of slaughtering horses for foreign  
21 dinner plates without public scrutiny. Until the BLM ceases  
22 this campaign of equine cleansing, our campaign against the  
23 BLM will only intensify." And, in fact, their campaign  
24 against the BLM did intensify. This is a direct threat, an  
25 attempt to coerce or retaliate against a government entity.

1           Next slide, please.

2           Vail ski resort. Now, Mr. Tubbs was not charged  
3 with this particular crime. He initially had traveled to  
4 Colorado to engage in -- as a participant in this particular  
5 crime, but as we are aware, he was detoured to go to the  
6 Rock Springs wild horse corral. The attempt was made there.  
7 Upon all the participants' return to Colorado, it was  
8 decided that this particular arson would be postponed.  
9 Everyone but Chelsea Gerlach and Mr. Rodgers left the area,  
10 and Mr. Rodgers and Ms. Gerlach completed the arson at the  
11 Vail, Colorado ski resort. The loss was about \$24 million.

12           This is the communique: "This action is just a  
13 warning. We will be back if this greedy corporation  
14 continues to trespass into wild and unroaded areas."

15           This arson, of course, happened shortly after the  
16 lawsuit was resolved and it was determined that the  
17 expansion onto United States Forest Service lands of this  
18 ski resort operation could continue. Mr. Rodgers and  
19 Ms. Gerlach were determined to make a statement, and they  
20 did. This was a statement of retaliation, coercion, and  
21 intimidation, and an attempt to try to influence both the  
22 ski resort and the government from continuing with the  
23 expansion of that facility.

24           Next slide, please.

25           United States Forest Industries. This is an arson



1 that occurred on December 27th, 1998. Two devices were  
2 used. Initially, Mr. Tubbs -- Ms. Rebecca Rubin,  
3 Jacob Ferguson, and Sarah Kendall Harvey at the time,  
4 Kendall Tankersley now, planned and executed this arson. A  
5 week prior to the actual burning of the building, they  
6 traveled down to Medford, Oregon. Mr. Tubbs was, of course,  
7 a driver, lookout at that particular point in time.

8 Ms. Rubin and Mr. Ferguson carried the fuel to the  
9 building. Mr. Ferguson placed the devices, set the timers.  
10 Ms. Tankersley was a lookout at that particular location.

11 They left the area. The devices failed to  
12 function. It was incredibly foggy at that particular time  
13 of the year, and the devices simply failed to function.

14 A short time later, three or four days later,  
15 Mr. Ferguson was aware that the arson had not taken place;  
16 that is to say, the building had not burned down. He was  
17 concerned about that, so he called Kendall Tankersley to  
18 drive down to Medford to check to see if the devices were  
19 still there.

20 She did, in fact, go there. She saw the buckets  
21 hidden in the bushes, and she called Mr. Ferguson and  
22 advised him of that. He arranged with Ms. Tankersley to  
23 meet in Ashland, Oregon. Mr. Ferguson came back from where  
24 he was, which was in Sacramento visiting with his mother.  
25 He came back to Ashland, Oregon, where he purchased -- sort

1 of did a makeshift timing device with a cigarette and  
2 matches. He -- they both returned back to United States  
3 Forest Industries building, their office building there.  
4 Mr. Ferguson went back up to the five-gallon buckets. He  
5 noticed that some of the -- some of the accelerant had  
6 actually vaporized. But he reestablished the timing device.

7 He and Chelsea Gerlach -- excuse me. I beg your  
8 pardon. He and Kendall Tankersley then left the area and  
9 found a motel room in a city a short distance away. The  
10 device, in fact, did function at that particular time, and  
11 the loss as a result of this arson was nearly a million  
12 dollars.

13 Childers Meat Company. We have heard about this  
14 before. Two devices used. Kevin Tubbs was involved with  
15 this. This was his arson, really. He was an ALF-type guy.  
16 He and Mr. Ferguson, Mr. Meyerhoff, Ms. Overaker,  
17 Ms. Gerlach, and another person were involved in this arson.  
18 Mr. Tubbs was the driver and lookout. The night of the  
19 arson, he drove his coconspirators to that location.  
20 Mr. Ferguson -- Mr. Ferguson's job was to place the devices,  
21 which he did. Ms. Overaker was -- assisted with that, as  
22 did the other person. They cut the wire fence which was  
23 behind the building next to a dairy. They entered the back  
24 side of that property. As I said, they placed the device  
25 under the eaves of the office door and placed the second



1 device back by the gas main. Both devices functioned.

2 The interesting part of this, as the court  
3 recalls, is that the fire -- the device in the front  
4 functioned first, caused the fire. The fire department  
5 arrived. Firefighters were in the building suppressing the  
6 fire, in and around the building suppressing the fire. Only  
7 then did the second device activate. That second device is  
8 the one that was placed next to the gas main.

9 The fire obviously was suppressed, but the damage  
10 and loss to that business was greater than a million  
11 dollars.

12 Next slide please.

13 Here's the communique: In pertinent -- the  
14 language of the communique that we believe is the pertinent  
15 part is that, "The Animal Liberation Front will continue to  
16 target these operations and their insurance companies until  
17 they are out of business." So now we are expanding not --  
18 these individuals are expanding their targets not only to  
19 these businesses, not only to government, but also to  
20 insurance companies, more ancillary businesses that are  
21 associated with these -- the businesses that they have a  
22 philosophy -- that their philosophy allows them to attack.

23 Next slide, please.

24 West University Public Safety Station,  
25 September 6th, 2000. Kevin Tubbs was recruited by

1 Mr. Meyerhoff and Ms. Gerlach to be the lookout. He was  
2 positioned across the street from this public safety  
3 station. As we know, this target was chosen for two  
4 reasons. Number one, to allow Mr. Meyerhoff to test his  
5 newly designed device; and secondly, because the activist  
6 community and Mr. Tubbs and -- excuse me -- Mr. Meyerhoff  
7 and Ms. Gerlach were upset with the Eugene Police Department  
8 because of their arrest and prosecution of Robert Thaxton,  
9 who had been recently given a seven-year jail sentence for  
10 assaulting a public safety officer and also for the Eugene  
11 Police Department's use of pepper spray on activists,  
12 radical activists during the seven-week revolt in Eugene  
13 some three months prior to this arson.

14 As we recall the facts, the devices were placed.  
15 Mr. Meyerhoff placed his device on the bicycle, leaned it up  
16 against the wall of the building. Ms. Gerlach placed her  
17 device, which was in a backpack, on a side wall.  
18 Mr. Meyerhoff's device functioned. A guard came over to try  
19 to pull the bicycle away from the building to try to  
20 minimize fire damage. The fuel in the device splashed out  
21 of the device and onto the ground around the security  
22 guard's legs. Another alert security guard came over and  
23 extinguished that fire with a hand-held fire extinguisher.  
24 As the investigators were looking and investigating the  
25 bicycle fire scene and investigating that particular device,

1 they also, then, were alerted to the fact that there was the  
2 backpack device. They called the bomb squad to render that  
3 device safe. What they found when they opened the backpack  
4 was that that device actually functioned as well. The only  
5 reason why it didn't burst into flames was because it was so  
6 closely, compactly wrapped in the backpack that there wasn't  
7 enough oxygen for it to burn completely.

8 Also, it's important to note and recall that this  
9 West University Public Safety Station is in an area of -- a  
10 highly populated area 24 hours a day. It's a public safety  
11 station that's utilized by police officers, certainly, to  
12 write reports and take breaks. It's also in a location that  
13 is close to the Sacred Heart Medical Center, which is a  
14 24-hour, seven-day-a-week operation with all kinds of  
15 individuals coming and going. And it's also down near the  
16 University of Oregon -- University District where students  
17 come and go at all times. These devices, of course, were  
18 placed next to the building but also in close proximity to  
19 the sidewalks where civilians and other innocents came and  
20 went.

21 Superior Lumber Company in Glendale, Oregon. At  
22 Superior Lumber Company, this involved Mr. Tubbs,  
23 Mr. Meyerhoff, Mr. McGowan, Mr. Ferguson, and Suzanne  
24 Savoie. This was planned because Superior Lumber Company  
25 was known to have harvested old growth timber and timber off

1 of public and private lands. It occurred January 2nd, 2001,  
2 the New Year's Day weekend. Two devices were used.

3 Mr. Tubbs was the driver of the team that went down there.  
4 He was also a lookout; was equipped with a radio, as always.

5 These individuals stationed -- or did their prep  
6 work at a staging area which was just north on I-5, north of  
7 the Glendale exit. They arrived at the staging area, put on  
8 their dark clothing, checked their radios, checked the  
9 devices to make sure they were functioning properly, and  
10 then proceeded from there to Glendale to the office complex  
11 of Superior Lumber Company. Mr. Meyerhoff, again, had his  
12 new device. He wanted to make sure that it would work  
13 properly. Mr. Meyerhoff and Mr. Ferguson, in fact, placed  
14 the devices at that location. Mr. Tubbs was a lookout.  
15 Ms. Savoie provided services as a lookout, as well, and  
16 Mr. McGowan.

17 The devices -- once the devices were placed,  
18 timers set, everyone was picked up, went back to the staging  
19 area. They took off their work clothes, so to speak, the  
20 dark clothing, their hats, their gloves, and placed them in  
21 sacks, bags. They kept their radios with them, but they  
22 returned, then, to the Eugene area, and on their way back,  
23 they deposited their clothing in various trash receptacles  
24 in rest stops along the way back to Eugene.

25 The loss of this arson was more than \$1 million.

1 This particular business was a small business in that  
2 community. Many of the people were put out of work during  
3 the holiday time. This business, however, because of its  
4 commitment to that community and notwithstanding the fact  
5 that it could do no business because of the devastating  
6 loss, the management and owners of Superior Lumber Company  
7 maintained their payroll for their employees because that's  
8 just the kind of people they are.

9 Next slide, please.

10 This is the communique, and in pertinent part, it  
11 states, "This year we hope to see an escalation in tactics  
12 against capitalism and industry."

13 They continued their onslaught. They continued to  
14 attack anything and anyone they believed was doing something  
15 that was against their personal philosophy. They meant to  
16 intimidate, they meant to retaliate, and they meant to  
17 strike fear into the hearts of the people that were in the  
18 community and the people that were involved with the  
19 business, and they were successful.

20 Next slide, please.

21 Joe Romania Chevrolet Truck Center, Eugene,  
22 Oregon. The court is very aware of the facts of this  
23 particular case. As you know, there was one actual timing  
24 device but multiple trailers. This occurred March 30th,  
25 2001, at Joe Romania Chevrolet Truck Center. 35 vehicles

1 were involved. It involved the -- the participants  
2 involved -- that were involved -- excuse me -- were William  
3 Rodgers, Nathan Block, Joyanna Zacher, Stanislas Meyerhoff,  
4 and, of course, Kevin Tubbs.

5 Kevin Tubbs was a lookout in this particular fire  
6 at the north end of the truck center parking lot. It was  
7 his job to alert the other coconspirators should -- should  
8 anything -- a police officer arrive, should there be any  
9 reason at all to abort the arson, that was his function.

10 The loss at that this particular location was  
11 approximately \$1 million.

12 Now, here's the claim for the arson. The court  
13 has seen this before, but, again, for the record, in  
14 pertinent part, the communique reads as follows. Of course  
15 we know that this communique was written after the fire. It  
16 was completed after there was no loss of life or injury. In  
17 pertinent part, it says:

18 "The time is right to fight back. Free and  
19 critter are being persecuted. The state thinks it  
20 can stop the growing resistance by jailing some of  
21 us. SUVs destroy the earth, while the prison  
22 system tries to destroy those who see beyond this  
23 empty life. We must strike out against what  
24 destroys us before we are all either choking on  
25 smog or held captive by the state."



1           This is a direct attack on the government process.  
2       In this particular instance, it was a direct attack on the  
3       Lane County Circuit Court and the prosecution of Jeffrey  
4       "Free" Luers and Craig Marshall, his codefendant. It was an  
5       attempt to influence the operation of the government.

6           Next slide, please.

7           Jefferson Poplar Farm. Again, the court is very  
8       well aware of the facts of this particular case. Six  
9       devices were used. Three failed to function near the office  
10      complex or the office building of that -- of that business.

11          Mr. Tubbs was a participant in the reconnaissance  
12      of this particular target, as was Ms. Gerlach.  
13      Mr. Meyerhoff, Block, Zacher, and McGowan were the ones on  
14      the ground. Ms. Savoie also participated in the  
15      reconnaissance of this particular target.

16          The graffiti left at the scene, again, this is  
17      part of the double whammy, the big double whammy between the  
18      University of -- or that involved the University of  
19      Washington Horticultural Research Center was also destroyed  
20      that night. The loss at this location was nearly a million  
21      dollars and ultimately caused the demise of the business.

22          Next slide, please.

23          Finally, the BLM wild horse corral, Litchfield,  
24      Oregon. Mr. Tubbs participated in this. There were four  
25      devices used. Three failed to function. Again, a danger to

1 those responding to extinguish the fire and suppress the  
2 fire of the hay barn that burned. The loss was over  
3 \$200,000.

4 Next slide, please.

5 This communique clearly indicates that the  
6 arsonists in this particular fire were attempting to  
7 influence the Bureau of Land Management and the government.

8 "For years, the BLM has rounded up thousands  
9 of wild horses and burros to clear public land for  
10 grazing cattle. Many of these wild animals are  
11 sent to slaughter."

12 This is also, of course, associated with their  
13 attempts -- their efforts at the Cavel West horse  
14 meatpacking plant.

15 The last portion of the communique that we have  
16 highlighted states as follows:

17 "In the name of all that is wild, we will  
18 continue to target industries and organizations  
19 that seek to profit by destroying the earth."

20 They clearly are referencing this location, this  
21 Bureau of Land Management operation. They are clearly  
22 retaliating against the government in this situation and  
23 trying to intimidate and influence the operation of the  
24 Bureau of Land Management in its wild horse and burro  
25 program.



1           Next slide, please.

2           This slide shows some other uncharged conduct  
3 against -- that was against Mr. Tubbs. He was not charged  
4 with this conduct. He avoided prosecution of this conduct  
5 for reasons of statute of limitations and also with regard  
6 to an agreement that he had with the government.

7           Wildlife Pharmaceutical was an arson in Fort  
8 Collins, Colorado. He was a participant in that. There's a  
9 Palmer Mink Farm with an animal release in Preston, Idaho in  
10 October of 1997. There was another animal release at the  
11 Glen Hollow Fur Farm in Hebo, Oregon. That occurred in --  
12 excuse me -- October 29th, 1997, about two and a half weeks  
13 later after the Palmer Mink Farm arson. And then, of  
14 course, the burglary and release of the dogs at the medical  
15 research laboratory, the BioDevices labs in Orange City,  
16 California, in August of 1999.

17          Next slide, please.

18          This is an accurate figure, Your Honor. We took  
19 it to heart yesterday, and this figure is -- shows the loss  
20 that was due to the arsons which involved Mr. Tubbs, and in  
21 fact, as you can see, it exceeds \$11 million.

22          Next slide, please.

23          This, Your Honor, is sort of a summary of the  
24 ability and Mr. Tubbs' function as a facilitator and his  
25 organizing roles throughout the conspiracy. At the Cavel

1 West arson, he was -- he researched that arson -- or that  
2 location, excuse me. This was a passion of his. He had, as  
3 I said before, read in the newspaper about the slaughter of  
4 wild horses there, and he was concerned about that. He did  
5 reconnaissance of the target by himself. He went back to  
6 Eugene and met with Jacob Ferguson and with Joseph Dibee and  
7 discussed the -- the target, and they had a discussion about  
8 what they could do at that location. He recruited or  
9 invited those individuals to go with him. They went to  
10 Redmond and, of course, did their own reconnaissance of the  
11 target.

12 At that meeting also, they -- once they did their  
13 recon of Cavel West, they had a consultation regarding what  
14 kind of arson techniques could be used. There was a  
15 concrete building, at least a portion of it was concrete.  
16 Mr. Tubbs had some concerns that it wouldn't be feasible to  
17 burn concrete. That's when Mr. Dibee came up with the idea  
18 of drilling hole -- excuse me -- drilling the hole in the  
19 wall.

20 Obviously, Mr. Tubbs was a team member of that  
21 arson at the time of the arson and was on the ground and  
22 assisting.

23 He also has the ability and did facilitate  
24 individuals to harbor Josephine Sunshine Overaker. He had a  
25 network of individuals. We believe that the person that he

1 had -- he talked about the person being up north. We  
2 believe that it was a contact in Canada.

3 He, throughout the conspiracy, as I mentioned  
4 before, provided the coconspirators with fraudulent and  
5 stolen identification documents and, in fact, had documents  
6 at the time of his arrest that he ultimately admitted were  
7 there to be used for any future actions. So up until the  
8 time of his arrest, he was still prepared to assist,  
9 facilitate, and introduce others to the use of false  
10 documents should they need to have those for their actions.

11 And he maintained -- maintained contact with The  
12 Family members up until the moment of his arrest and, in  
13 fact, was -- as a result of our consensual recordings with  
14 Mr. Tubbs, we were able to locate several of our defendants.

15 This is a slide that just basically depicts what I  
16 have just stated. Kevin Tubbs was in contact with Joseph  
17 Dibee. He was in contact with William Rodgers, and the fact  
18 is three weeks before William Rodgers' arrest, we gleaned  
19 the information from Mr. Tubbs and found the location of  
20 Mr. Rodgers. We had not been able to find Mr. Rodgers for  
21 many, many months throughout the investigation and, at the  
22 last hour, were able to locate Mr. William Rodgers by  
23 consensual recordings of Mr. Tubbs.

24 We were able to locate Stanislas Meyerhoff; also  
25 Chelsea Gerlach through Mr. Tubbs as well. Mr. Tubbs had

1 had contact with Jonathan Paul and, of course, had had  
2 meetings with and met with Darren Thurston and Chelsea  
3 Gerlach. Darren Thurston and Chelsea Gerlach were a couple  
4 at that particular point in time. And so Mr. Tubbs was able  
5 to visit with those individuals.

6 Next slide.

7 This is a photograph of one of the documents that  
8 we recovered as a result of the search warrant at his house  
9 at the time of his arrest. This is a drivers' license for a  
10 person by the name of Ronald Calloway. Ronald Calloway is  
11 actually an African-American. He's a real person.

12 Mr. Tubbs adopted Ronald Calloway's identity and used this  
13 identity in registering his vehicle, his van. The van was  
14 used in more than one arson throughout the course of the  
15 conspiracy.

16 Next slide.

17 These are documents also found at the home of  
18 Mr. Tubbs at the time of his arrest. The items -- the two  
19 photographs on the right-hand side is the front and back of  
20 a Canadian birth certificate in the name of Kevin Paul  
21 Lilley, and the document on the left-hand side, it's very,  
22 very hard to read, but it is a -- a Santa Clara County,  
23 California birth certificate for Kevin Michael Golitz that  
24 Mr. Tubbs kept and maintained. Now, the birth certificate  
25 of Mr. Golitz is the one that was derived from a research of

1 death records, and then once they determined that there was  
2 an individual that was deceased, they ordered up the birth  
3 certificate. They use utilized that birth certificate,  
4 then, to get fraudulent identification. Normally it would  
5 be legitimate because [sic] the certificate was falsely  
6 obtained, it was fraudulent identification, and they used  
7 that --

8 (Reporter interrupted.)

9 MR. ENGDALL: But it was falsely obtained. The  
10 certificate was legitimate but falsely obtained, and so they  
11 used that to get and to order and apply for additional  
12 fraudulent identification documents.

13 Next slide, please.

14 These two drivers' licenses were found at the  
15 residence of Mr. Tubbs. We have obliterated the  
16 identification markings on the drivers' licenses. These  
17 were found at his home at the time of his arrest. I want to  
18 call the court's attention though, to the issue date of  
19 these particular drivers' licenses. These are ones that he  
20 kept that were left at his business, his place of  
21 employment, I should say, and he never returned them. He  
22 just saved them for possible use of direct actions in the  
23 future. The issue date of the one on the left was  
24 March 1st, 2004. The one on the right is November 27th,  
25 2001. These dates become significant because he has

1     professed that he left the ideologies of the ELF and ALF  
2     behind him. He was a legitimate citizen not involved with  
3     any kind of criminal conduct, and yet within -- certainly  
4     the issuance date was close to a year prior to his arrest.  
5     We don't know exactly when he obtained that particular  
6     document, but certainly it must have been sometime after  
7     March of 2004.

8             Thank you.

9             One factor, Your Honor, if we can go back to the  
10     Ronald Calloway license picture. I should advise the court,  
11     I misspoke myself. This was not found as a result of the  
12     search warrant at his residence. He had destroyed this  
13     identification, and the reason why he destroyed the  
14     identification, according to his statement on the consensual  
15     recordings when he was talking to Jacob Ferguson, was  
16     because he had this identification document, and he had  
17     received a jury summons. He was to be -- serve as a juror  
18     in Lane County and he did not appear at Lane County, and he  
19     was fearful that he would be arrested for not appearing and  
20     performing his jury service. So he told Mr. Ferguson that  
21     that was the reason why he destroyed that particular  
22     document.

23             That concludes the slide show, Your Honor, that we  
24     have, our PowerPoint presentation.

25             I'd like to, with the -- if the court would



1 entertain, provide to the court the government's arguments  
2 for its request for a two-level enhancement for an  
3 aggravating role pursuant to United States Code § 3B1.1(c),  
4 and then discuss the terrorism enhancement justification.

5 With regard to the aggravating role, it's the  
6 government's contention that Mr. Tubbs was not necessarily a  
7 leader, but, as I have characterized it, he was a  
8 facilitator and an organizer, which I think would qualify as  
9 a manager in activity that would not be otherwise described  
10 in the sections of 3B1.1(a) and (b).

11 And the basis of this is that, one, he identified  
12 targets and invited others to engage in criminal acts. He  
13 recruited Ms. Rebecca Rubin. He invited Mr. Ferguson and  
14 invited Mr. Dibee to participate with arsons. He funded  
15 Stan Meyerhoff so that Mr. Meyerhoff could train Ian Wallace  
16 on how to construct incendiary devices in Minneapolis,  
17 Minnesota. He arranged for Mr. Meyerhoff to meet with  
18 Captain Paul Watson, who provided cash to Mr. Meyerhoff to  
19 continue his commission of arsons. He provided fraudulent  
20 identification to his coconspirators, and he arranged for  
21 the harboring of his fugitive coconspirator Josephine  
22 Overaker should she ever need additional assistance in  
23 avoiding law enforcement detection. And as I mentioned  
24 before, he recruited Rebecca Rubin for the arson at United  
25 States Forest Industries.

1           With regard to the terrorism enhancement, I simply  
2 reference, without much discussion, the Eugene Police Public  
3 Safety Station. That arson was selected because it was,  
4 among other things, a retaliation against the Eugene Police  
5 Department for its involvement with the arrest and  
6 prosecution of Robert Thaxton for the assault on police  
7 officers, and for the retribution against the police for the  
8 use of pepper spray on the Eugene activists during the  
9 seven-week revolt.

10           Regarding the Romania Truck Center arson, again,  
11 this was a retaliation and a threat against the state  
12 government for its prosecution and trial of Jeffrey Luers.  
13 The communique gives the most compelling evidence of their  
14 intent and of the intent of the defendant and his  
15 coconspirators.

16           And lastly, the Jefferson Poplar Farm, this was  
17 the double whammy. It was intended to retaliate and  
18 intimidate and influence state universities in both --  
19 excuse me -- in Washington and intended to influence  
20 legislative bodies in both states, the State of Oregon and  
21 the State of Washington. Again, the communique is the most  
22 compelling evidence of the defendant's attempt to affect,  
23 coerce, and retaliate against the government.

24           With regard to the government's sentencing  
25 considerations, again, the process by which the government

1 arrived at the recommendation for Mr. Tubbs is identical to  
2 the process that we used to arrive at the sentencing  
3 recommendation for Mr. Meyerhoff and all the defendants. We  
4 considered the crime, the nature and dangerousness of the  
5 crimes, the complexity of the arsons, specific threats to  
6 humans. We considered the statutes that were involved, the  
7 guidelines. We looked at the individual's background. We  
8 invited comment from the relatives. Actually, Mr. Tubbs'  
9 mother spoke to the prosecution team. We looked at the  
10 cooperation and the policy considerations. We consulted  
11 with other departments, agencies, with other districts, and  
12 certainly with the -- the staff in our office.

13 In conclusion, the government's recommendations of  
14 168 months for Mr. Tubbs is predicated on the following  
15 factors: The main mitigating factor, Your Honor, was that  
16 he, in fact, cooperated with the government three weeks  
17 after his arrest, and that was substantial assistance to the  
18 government and assisted the government in its continuing  
19 investigation and prosecution of other codefendants.

20 Factors in aggravation were that his cooperation  
21 began only after he was arrested and after he had received  
22 court-appointed counsel, after three other coconspirators  
23 had already cooperated with the government and agreed to  
24 testify against Mr. Tubbs, himself. That would be  
25 Mr. Ferguson, Mr. Meyerhoff, and Ms. Kolar.

1           After -- this was -- he also agreed to cooperate  
2 with the government only after the death of Mr. Rodgers and  
3 only after he was allowed to hear himself on the consensual  
4 recordings. Throughout his debriefings with the government,  
5 he tended to minimize his role and was somewhat  
6 self-serving, and unlike Mr. Meyerhoff, he was a true  
7 believer in the cause of the Earth Liberation Front as well  
8 as the Animal Liberation Front. He participated in 14  
9 arsons but was allowed to plead guilty to only nine. He  
10 abused illegal drugs continually until the date of his  
11 arrest and continued to be involved in minor criminal  
12 conduct until the time of his arrest.

13           He was never able to fully realize the enormity of  
14 his criminal conduct. He was less than remorseful of his  
15 actions prior to his arrest, and after his arrest, he  
16 continued to maintain what was a -- maintain that he was a  
17 person of peace and a nonviolent man, despite his violent  
18 acts. He continued to maintain contact with his  
19 coconspirators until the day of his arrest. His career as a  
20 serial arsonist placed others in harm's way and in serious  
21 risk of physical injury and death.

22           He was involved in at least nine separate arsons  
23 in which incendiary devices were used, as well as one crime  
24 of destruction -- strike that. He was not involved on that.  
25 As well as one crime of destruction -- at least one crime of

1 destruction and animal releases. He avoided prosecution for  
2 several reasons. One was due to the statute of -- some of  
3 which were due to the statute of limitations reasons.

4 The total damage caused by the actions of this  
5 defendant were, as I mentioned before, more than \$1 million  
6 and the loss of untold scientific research, business  
7 records, and other personal property.

8 (Counsel conferred.)

9 MR. ENGDALL: What did I say? 1 million? I meant  
10 \$11 million. I beg your pardon.

11 We believe that the recommendation of 160 months  
12 is a sentence that provides the following:

13 It's a sentence that has meaning to the defendant  
14 and to the public. It ensures accountability for the  
15 defendant and justice for the victims. It reflects the  
16 seriousness of the criminal conduct, and it will serve to  
17 deter others. It accounts for the defendant's acceptance of  
18 responsibility and must consider the defendant's rejection  
19 of his violent lifestyle in his efforts to become a  
20 productive citizen, however that's in play in this  
21 particular situation. And it considers his substantial  
22 assistance to the government.

23 That is our recommendation, Your Honor.

24 At this time, I would ask to allow Ms. Marsha  
25 Ledbetter and Dennis Sullivan to speak to the court.

1 THE COURT: That's fine.

2 Please come forward.

3 THE CLERK: Ma'am, can I just have you step -- oh,  
4 they are just going to speak? Are they to be sworn?

5 THE COURT: Mr. Engdall, do you want them sworn?

6 MR. ENGDALL: No, Your Honor. I'm sorry. These  
7 are just statements as victims. Thank you.

8 MS. LEDBETTER: My name is Marsha Ledbetter, and I  
9 worked at the Oakridge Ranger District.

10 The Oakridge Ranger District was more than a  
11 government building. It was a place of work for planners,  
12 foresters, archeologists, biologists and engineers. These  
13 workers used documents left by professionals that came  
14 before them. They recorded the current forest conditions  
15 and compared that to the history left to them to determine  
16 the best placement of roads, timber sales, and campgrounds.  
17 They planned for public safety, improved fish and wildlife  
18 habitat, and projected where fires might happen that could  
19 be devastating to the community.

20 They documented their findings and assessments for  
21 the next generation of forest workers to use as their  
22 roadmap to determine where we had been and where we were  
23 going in our mission to care for the land.

24 The information from past generations of forest  
25 service employees was handwritten. Not all had been



1 transformed into computer data bases like we have today.  
2 The district fire destroyed much of this historical  
3 information. It was as if we took all the history books  
4 explaining what happened on the district in the past and  
5 threw them away.

6 Employees found the loss of the professional  
7 history devastating, but the personal impacts were just as  
8 hard to deal with. There were many questions. Who did  
9 this. Why did they do this. What happens now. And will  
10 they strike again.

11 The event was intimidating. I looked over my  
12 shoulder more, didn't share where I worked when talking with  
13 people. Where I once trusted and felt secure, I no longer  
14 did.

15 The days after the fire are imprinted in my mind.  
16 Days like the day we opened the safe, only to have the  
17 paperwork burst into flames when oxygen mixed with heat,  
18 causing ignition three weeks after the fire.

19 The day we visited the site to salvage anything we  
20 could find to take with us of our work history. Some people  
21 found nothing, as it was all burned beyond recognition.  
22 Finding a trinket given by a friend for a birthday, locating  
23 a family photo, or finding boots used to do your job became  
24 like finding a hidden treasure. Every time I drove past the  
25 site, I burst into tears, as I remembered standing and

1 watching as the years of work that took place at this site  
2 went up in smoke.

3 In the quiet of night, when sleep was far away,  
4 I'd get up and write about my feelings as a way to organize  
5 my thoughts and gain control of the emotion. One night I  
6 wrote, Out of the ash, the smoke and the flame, our lives  
7 changed forever. We'll never be the same. Out of the ash,  
8 the pain cuts so deep, that knot in my stomach, can anyone  
9 sleep. Out of the ash, the questions still grow. What will  
10 we do, and where will we go. Out of the ash, acts of  
11 violence appear. Who did we talk to and who did not hear.  
12 Out of the ash, the loss seems so great. No office, no  
13 culture, just feelings of hate. Out of the ash, we save a  
14 reminder of a time that was happy, gentle, and kinder. As  
15 with all history, this too will pass. We will be stronger  
16 out of the ash.

17 I thought the memories of the fire would pass, but  
18 they are just hiding. Even after a decade, I can smell the  
19 smoke, feel the heat, and see the fear and anguish on the  
20 faces of my coworkers and friends. The memories are hiding  
21 in those dark places of my mind, right next to security and  
22 trust.

23 MR. ENGDALL: Thank you.

24 Mr. Sullivan.

25 MR. SULLIVAN: My name is Dennis Sullivan. I'm

1 the assistant fire management officer at the current Middle  
2 Fork Ranger Station, but I was the -- also the assistant  
3 fire management officer at the night of the fire at the  
4 Oakridge Ranger Station.

5 In 1956, at the young age of six, my family's home  
6 burned to the ground one week after Christmas. I still  
7 remember how devastating that experience was. Not only did  
8 we lose all of the neat toys and new clothes, but everything  
9 that meant anything to our family was gone.

10 I lived with relatives and friends in cramped  
11 quarters, and most of our clothing were hand-me-down from  
12 people who wanted to help. Not a lot of fun period in my  
13 life. Little did I know that 40 years later, a similar  
14 tragedy would occur in my life. I got a phone call from my  
15 boss, Dale Gardner, who at that time was the fire management  
16 officer. Dale is also a volunteer firefighter for the City  
17 of Oakridge. He told me that the building at the Oakridge  
18 Station was on fire and I needed to respond. When I left  
19 the Oakridge city limits and saw a huge orange glow in the  
20 sky, my heart sank. Deep down in my heart, I knew that very  
21 little could be done to save anything. When I arrived at  
22 the station, the majority of the building was on fire from  
23 the front to the back, and remember thinking that it was  
24 impossible for a fire to spread that fast from one end of  
25 the building to the other.

1           Only the fire --

2                       (Reporter interrupted.)

3           THE COURT: Can you just take a deep breath, and  
4 if you'd just slow down a little bit and start maybe about a  
5 paragraph before.

6           THE WITNESS: Okay. I got a phone call from Dale  
7 Gardner?

8           THE COURT: That's fine.

9           THE WITNESS: Okay. I got a phone call from Dale  
10 Gardner, my boss, who was the fire management officer. Dale  
11 was also a volunteer for the firefighting -- structural  
12 firefighting office -- group at the station. He told me  
13 that there was a fire at the Oakridge Ranger Station and I  
14 needed to respond. When I left the Oakridge city limits and  
15 saw a huge orange glow in the sky, my heart sank. Deep down  
16 in my heart, I knew that very little could be done to save  
17 anything.

18           When I arrived at the station, the majority of the  
19 building was on fire from the front to the back, and  
20 remember thinking that it was impossible for a fire to  
21 spread that fast from one end of the building to the other.  
22 Only the fire management wing of the office was not burning.

23           My office was near the end of the wing. My boss  
24 asked me to become the incident commander for the incident  
25 because he was needed by the structure firefighters. I

1 remember first walking around the facility to assess the  
2 situation. I felt that if anything was savable, it would be  
3 the fire management wing. However, the fire was spreading  
4 rapidly down the hall toward my work area.

5           Efforts by the structure fire department to stop  
6 that fire became impossible. At that time there was no --  
7 not sufficient water supply to accomplish much, and my task  
8 was to get our wildland firefighter engines to supply the  
9 structure engines with water. This meant hauling water from  
10 the city limits to the station.

11           Orders needed to be placed for engine operators.  
12 This took time. Once drivers arrived, a turnaround time for  
13 each engine was 15 to 20 minutes. Needless to say, the  
14 firefighting effort was highly affected.

15           It was around this period of time that I was  
16 informed that there could be a district employee in the  
17 building. This employee occasionally slept in the office.  
18 I remember standing there looking at this building, which  
19 was totally in flames, with a feeling of total helplessness.  
20 I was numb. The thought that somebody was in there sickened  
21 me. There was absolutely nothing anyone could do. I  
22 remember giving some instructions to try and find out if  
23 this person was -- was at home. It wasn't until sometime  
24 later that I was informed that that person of concern was  
25 indeed at home. It wasn't until -- okay. I remember tears



1 came to my eyes when I heard the good news.

2           The structure fire department primarily  
3 concentrated on cooling off the building, which was now  
4 totally engulfed. I grabbed a waterline and began spraying  
5 water onto my burning work area. At that time, I had an  
6 antique oak desk that was on fire, but my primary concern  
7 was preventing the right bottom drawer of that desk from  
8 burning. All of my important documents concerning my  
9 25-year career with the forest service were in that drawer.  
10 I was able to put some of the fire on the desk out and the  
11 surrounding area, and I remember looking around behind me to  
12 see if anyone was looking. I didn't see anyone, so I jumped  
13 in through the window, grabbed the drawer, placed it outside  
14 the window, and climbed out. Later, when I reflect back on  
15 the event, the only thing that comes to mind was dumb.

16           I felt fortunate that I was one of the few people  
17 that had anything that survived that fire. I dried out  
18 those water-logged papers and I still have them. They are  
19 burned around the edges, and most of the stuff was  
20 salvageable. I remember feeling -- I remember feelings of  
21 loss. Years of hard work, history, and antiques gone. I  
22 remember a feeling of helplessness. Mentally I was  
23 convinced that this event was arson, and I became very  
24 angry. I told myself that I was not going to let anyone --  
25 let whoever did this ruin my life.



1           In the days that followed, I witnessed fear in  
2   fellow employees. People who were afraid to go into the  
3   woods and do their jobs. Many would only do so if  
4   accompanied by someone else. My fiancée flat told me that I  
5   wasn't going to go into the woods by myself, and we had  
6   arguments over this issue. Fortunately, I was able to  
7   convince her that, for my own health, I needed to get back  
8   to some type of normalcy in my life, and that meant not  
9   surrounding myself with fear.

10           When the Oakridge district employees moved into  
11   the Rigdon Ranger Station, the 40-year-old childhood  
12   memories came back to me. Everyone wandered around in a  
13   daze trying to grasp at something that they could identify  
14   with. Lots and lots of tears by everyone. People were kind  
15   to us, but you never really feel at home when you are  
16   sharing limited space with others in their home.

17           I moved to this community in 1972 and have worked  
18   at the ranger station since that time, and I considered both  
19   the community and the place I worked as my home. I felt  
20   that my home had been destroyed again. I had to use other  
21   people's used office furniture that someone else didn't  
22   want, and borrow just about everything needed to do my job.

23           Yes, a new building has been constructed. I am,  
24   once again, working at the similar location, but it has  
25   never been the same.

1 Thank you.

2 MR. ENGDALL: Thank you, Mr. Sullivan.

3 Your Honor, that concludes the government's  
4 presentation to the court.

5 THE COURT: Why don't we begin at 12:30.

6 MR. FRIEDMAN: Thank you, Your Honor.

7 THE CLERK: Court is in recess until 12:30.

8 (Recess.)

9 THE COURT: Thank you. Please be seated.  
10 Counsel.

11 MR. FRIEDMAN: Thank you, Your Honor. Good  
12 afternoon.

13 From the opinion issued on Monday afternoon and  
14 your ruling yesterday in Mr. Meyerhoff's case, the court's  
15 provided some guidance on its view of these cases. We don't  
16 want to belabor the evidence which was received yesterday  
17 other than to ask this court to adopt, for the purposes of  
18 Mr. Tubbs' sentencing, the information regarding the Bureau  
19 of Prisons and classification systems and the impact upon a  
20 cooperating witness, a snitch, when a person is  
21 incarcerated. And we will delve into that in a little bit,  
22 Your Honor, but that is certainly the situation that faces  
23 Mr. Tubbs. And as you will see, Mr. Tubbs' cooperation has  
24 branded him as a snitch.

25 Kevin Tubbs is an earnest and honorable man whose

1 past decisions were skewered, mired by the sincerity and  
2 depth of his beliefs and personal passions and the perceived  
3 righteousness of his cause. And this blinded him to the  
4 criminality of his actions. His actions grew out of  
5 frustration and a zealous desire to save this planet, yet,  
6 in his desire to do right, the preeminent necessity was to  
7 do no harm to any living thing, human, animal, or plant.  
8 Today he understands that the justness of a cause does not  
9 permit the violation of law or excuse the damage to the  
10 property of others or the hardship and misfortune he has  
11 caused others.

12 Your Honor, there is much which needs to be said,  
13 perhaps too many issues to address today to settle without  
14 seem to nitpick. But Your Honor, some of the errors, the  
15 misinformation in the government's presentation and the  
16 government's memo cannot be ignored. Further, this  
17 misrepresentation and misinformation is representative of  
18 the government's misunderstanding and/or unwillingness to  
19 see Kevin Tubbs clearly, and that's what we are asking this  
20 court to do, is see Mr. Tubbs clearly.

21 Until December 5th, 2005, the day Kevin Tubbs was  
22 arrested, the government, the FBI, ATF, Eugene Police, and  
23 justice department had expended considerable time, energy,  
24 and resources to solve this case. And in that time, Your  
25 Honor, an image, an understanding, a suspicion, a theme was

1     formed in the minds of the investigators in the justice  
2     department. We know now -- what we know now is this was not  
3     because of sophistication or brilliance or vast resources of  
4     these perpetrators. These actions, these arsons, were not  
5     carried out by well-financed, well-trained operatives. This  
6     was not a cadre of people who had taken blood oaths or sworn  
7     allegiance to one another or to another group or power.  
8     This was neither a tight-knit cell or, as the government has  
9     chosen to call them, The Family.

10            These are simply idealistic individuals who, on  
11     occasion, came together to -- who conducted themselves by  
12     consensus, who, without real leadership and with limited  
13     planning and skills, caused considerable damage. Not  
14     designed to topple our government, not intended to  
15     intimidate or coerce anyone or anything, not the government  
16     or any party, but simply to make a statement which they  
17     hoped would focus people's attention on the issues they  
18     believed relevant, the cause of animal rights, animal abuse,  
19     the horrific slaughter of horses and cattle for human  
20     consumption, and the cause of environmental protection, the  
21     prevention of environmental degradation, and the  
22     preservation of the life-giving earth.

23            But after almost ten years of pursuing dead ends,  
24     being frustrated and baffled, when the government cracked  
25     its case and seized upon Jacob Ferguson and secured his

1 cooperation, the government was committed to a theory, an  
2 idea of who these people were.

3 Even if these were not the dangerous and  
4 diabolical criminals the government wanted to believe they  
5 had been pursuing all these years, the government had its  
6 story, and they were committed to it. When Attorney General  
7 Gonzales proclaimed the government had succeeded in  
8 capturing the largest eco-terrorist cell in the Northwest,  
9 the dye was cast, in whatever form the word came from  
10 Washington, and we believe that local counsel is truthful  
11 when they say none of them had direct contact with the  
12 justice department in D.C.

13 I recall in my first meeting with the  
14 investigators and the AUSA, they told me that Mr. Tubbs was  
15 a true believer and that Kevin Tubbs would not cooperate  
16 with the government. I have no doubt they were sincere when  
17 they said this, because what did they have to go on? Only  
18 the word of Jacob Ferguson. Yes, there were tapes which  
19 Ferguson had made at the direction of the government, many  
20 tapes, in fact, where Mr. Ferguson wore a body wire when he  
21 was sent to meet with his old friend, Kevin Tubbs.

22 There are, however, a combination of factors which  
23 have shaped the government's perception of this case and  
24 upon which the government's case now rests.

25 First, its original ideas about the acts and the



1 actors. Long before they had any clear idea of who these  
2 people were or even what they were about, the notion that  
3 this was a sophisticated, well organized, and well led group  
4 was set.

5 Two, the information gleaned from Jacob Ferguson  
6 and the manner in which it was shaped and reshaped in the  
7 one half or two years he worked with them. Mr. Ferguson's  
8 story did not come out at one time as a clear, concise,  
9 forever unaltered story. Mr. Ferguson's version of these  
10 events developed over time; was enhanced or modified as he  
11 continued to work for the government's investigators. And  
12 for Mr. Ferguson, who is the primary fire starter,  
13 recruiter, the core of so much for which Mr. Kevin Tubbs now  
14 stands charged, Ferguson's statements, his motivation was to  
15 minimize his own role, to deflect responsibility, and cast  
16 others as the leaders and planners to reduce his own  
17 culpability. And whether the government bought this or not,  
18 we dot not know.

19 What we do know is that Ferguson is an unreliable  
20 source. And we can and will see, when compared -- when we  
21 compare what he has said to what other defendants have said,  
22 that what he's said has not been reliable, has not been  
23 completely truthful -- has not been truthful.

24 And where we don't have information from other  
25 defendants to flesh out this truth, and that's one of the



1 things that I have provided for the court in my memorandum,  
2 and I will go over briefly here today, just a comparison  
3 between the information that was developed between -- from  
4 Mr. Tubbs, from Mr. Ferguson, and the 302s that were  
5 developed from the other defendants in this case.

6 And, again, where we don't have information from  
7 other defendants to flesh out the truth, as in Oakridge, we  
8 can and will look to the source and ask this court to  
9 consider this when determining if Kevin Tubbs is being  
10 truthful with the court.

11 Finally, Your Honor, the government's perception  
12 of this case relies upon an effort to make the information  
13 it has match its goal of casting Mr. Tubbs and his  
14 codefendants as terrorists. Each fact, each bit of  
15 information is being stretched, twisted, and forced to  
16 comport with their framework, which just doesn't fit. In  
17 the government's effort to rationalize the terrorism  
18 enhancement, motives, beliefs, intentions are being ascribed  
19 to Mr. Tubbs. These no more represent his actual motives,  
20 beliefs, or intentions than does perhaps the current  
21 administration's foreign policies reflect the American  
22 public's will. It's a view which the government has been  
23 committed to and does not permit the truth or the facts to  
24 shake them. And I will discuss this in greater detail in a  
25 moment.

1           Further, Your Honor, and we submit that this will  
2   be shown as -- through the course of this afternoon, the  
3   government does not offer sufficient proof, proof which the  
4   court has already established as the proper criteria, clear  
5   and convincing, to establish these motives. But a clear  
6   example of this is in the notion of "The Family." This is a  
7   term which was only used by Mr. Ferguson with Mr. Tubbs in a  
8   passing reference to avoid naming the friends and associates  
9   with whom they once both had connections. To Mr. Tubbs,  
10   this was not a denominator or identifier which was ever used  
11   by the various people in association with each other. But  
12   for the government, this reference has taken on great  
13   meaning, because this reference comports with their view of  
14   the people as a cohesive group or a cell, a family. Perhaps  
15   this term was used by those people who participated in the  
16   Book Club meetings. But Kevin Tubbs did not. And as we  
17   will say again, Kevin Tubbs was never part of the Book Club.

18           However, for the court to truly understand these  
19   events and the roles which various individuals played, it's  
20   critical to understand how individuals related to each  
21   other, how this loose-knit group of occasional associates  
22   functioned to conduct the actions they did.

23           Contrary to the government's expectation and  
24   belief that there was a top-down hierarchy in which there  
25   was clear leadership and responsibility for the planning and

1 supervision, that simply did not exist here. People came  
2 together and engaged in actions by consensus. Each person  
3 brought various skills and differing desires. Each person  
4 did what they wished to do, to the extent they were capable.  
5 There was never a true leader or leaders. There were  
6 individuals like Mr. Ferguson or Mr. Rodgers or Mr. Dibee or  
7 Mr. Meyerhoff who identified targets, conceived plans, built  
8 devices, coordinated people to help carry it out. But each  
9 of these operations came together with little discipline and  
10 limited discussion. People took on role -- duties and roles  
11 as they saw fit, stepping forward where they chose. It was  
12 more along the lines of a game of telephone than a chain of  
13 command. Often a plan evolved as people came forward to  
14 participate.

15 Leadership was lacking, and particularly in the  
16 beginning, where Ferguson was concerned, information was not  
17 shared. This is a critical factor where the government  
18 attempts to ascribe or infer aims and goals or intentions  
19 upon the group. Even if one person had a specific purpose  
20 in carrying out a particular action, that purpose does not,  
21 cannot automatically ascribe to the others, particularly in  
22 this case where Kevin Tubbs may have driven or acted as a  
23 lookout out of a duty or loyalty only to a friend, rather  
24 than for any political or social goal.

25 Further, for the most imbecilic reason of all,

1 Kevin's involvement often hinged on nothing more than the  
2 fact that he lived in Eugene and was available, loyal, and  
3 lonely.

4 I have a few more comments by way of introduction,  
5 Your Honor. Kevin Tubbs was never a participant in the  
6 so-called Book Club and never even heard of it referred to  
7 as such until seeing the discovery provided by the  
8 government.

9 The government's sentencing memo contains numerous  
10 errors. Some may be simply oversights, some basic  
11 misstatements of fact. For instance, the government  
12 repeatedly states that Kevin Tubbs pled guilty to or was  
13 involved or responsible for the BPA tower attack. This is  
14 patently false. This is an error which I'm confident they  
15 will acknowledge but is representative of the erroneous  
16 information presented to this court.

17 Another example, one that's referred to both in  
18 the memorandums discussed this afternoon -- this morning, is  
19 a statement that Kevin Tubbs gave Stan Meyerhoff a thousand  
20 dollars to travel across the country and start other cells.  
21 This is false.

22 Is this up?

23 I apologize, Your Honor. I'm looking at the  
24 bottom of a 302 from Mr. Meyerhoff in which it clearly  
25 states that Meyerhoff said that during the 2000 or 2001

1 E-LAW environmental law conference in Eugene, Tubbs, or  
2 possibly Rodgers, arranged a meeting between Meyerhoff and  
3 Captain Paul Watson. Meyerhoff at first identified Watson  
4 as part of Greenpeace, but after the interview, it goes on  
5 to say, "Watson gave Meyerhoff a thousand dollars or  
6 slightly more during the 20 or 30-minute meeting. Watson  
7 did not speak of specifics but talked of supplies Meyerhoff  
8 needed to continue his work. It was clear to Meyerhoff that  
9 the funds were intended to support the arsons he was  
10 committing in the area. Meyerhoff went to the meeting  
11 already knowing that he was there to receive payment and,  
12 upon further reflection, believes Tubbs set up the meeting."

13 Again, what we have here, Your Honor, while the  
14 government is trying to indicate that Mr. Tubbs was  
15 responsible, what we have, at best, is an unclear  
16 recollection from Mr. Meyerhoff that Tubbs may have some  
17 role in precipitating this meeting, and, again, it's quite  
18 clear that he's not certain of that. What I'd submit, Your  
19 Honor, is the truth is being stretched to fit the facts as  
20 the government wants to see it.

21 Finally, Your Honor, the burden is on the  
22 government to present evidence, clear and convincing  
23 evidence that offenses to which Mr. Tubbs has pled are  
24 subject to the terrorism enhancement, and specifically, that  
25 the motive is calculated to affect the conduct of government



1 by intimidation or coercion, or retaliation against  
2 government conduct, what we can term this terrorist  
3 motivation.

4 This court has determined that the conspiracy  
5 under § 371 can be subject to the enhancement if the  
6 government proves by clear and convincing evidence that the  
7 specific acts in this case, we are only addressing acts  
8 against private property under 844(i), were motivated by  
9 this terrorist motivation. We submit that the government  
10 has not done so, cannot do so.

11 Additionally, the court has found that 844(f)(1)  
12 actions, in this case for Mr. Tubbs we are referring to  
13 Oakridge and BLM Burns, cannot be considered as predicate  
14 acts for the purposes of the conspiracy. Whether these acts  
15 are subject to the terrorism enhancement as substantive acts  
16 the court has left open, and I will address this towards the  
17 end of my presentation this afternoon.

18 But overall, it's the element, the inquiry into  
19 motivation, which is the key to the issues that are before  
20 this court today.

21 And even if you were to find that the enhancement  
22 applies to some defendants, it does not necessarily apply to  
23 Kevin Tubbs. We submit, and I believe the government has  
24 conceded that this court has -- has held -- and has held  
25 that information elicited from Mr. Tubbs' proffer cannot be



1 used against him. While it is proper for all such  
2 information to be presented to the court, it is wholly  
3 improper under sentencing guidelines 1B1.4 for this  
4 information to be used against him. And we'll talk  
5 specifically about which counts that may refer to.

6 We have provided the court a full and, we submit,  
7 an accurate description of Mr. Tubbs' roles and  
8 responsibilities in each and every action in which he was  
9 involved. Mr. Tubbs has not shied from addressing both the  
10 charged and uncharged events. We know the government  
11 disputes Mr. Tubbs' role in the Oakridge fire and his role  
12 at Cavel West and has inflated his role in other incidents.

13 What I would like to do, Your Honor, so you can  
14 understand the man that is before you today for sentencing,  
15 is delve into his background a little bit before I talk  
16 about his particular part -- what happened in the various  
17 incidents in which he is charged and to which he has pled,  
18 because you can't understand who he is and how he ended up  
19 here without understanding this background, because that's  
20 the key to understanding the motivation. What has taken  
21 Kevin Tubbs from what I submit is a very naive, a very  
22 ineffectual individual to the man who sits here today.

23 And there's a few things, because I know the court  
24 has had a chance to read our memorandum in this case, but a  
25 few highlights that are really important, Your Honor. His

1 father served in the military, served honorably in the  
2 military, was in the Marines, and then went into the Air  
3 Force. Served both in Korea and Vietnam. Met his wife  
4 while he was stationed in Germany. They got married. Kevin  
5 has an older sister who is sitting here today. Right there.  
6 And his niece is also here.

7           What Kevin's mother instilled in him was a  
8 fundamental respect for life and a very fundamental love of  
9 animals. And this part of him, this passion is something  
10 that has carried him, unfortunately, to this day. As a  
11 youth, his mother brought in strays, and animals were always  
12 there, always there in his life. And he was fortunate. He  
13 was brought up in a good and loving and caring home.

14           One of the things that his mother also showed him  
15 was not only this love of animals, but a caring for other  
16 people, a loyalty, a devotion to other people. And, again,  
17 that is something that's carried him forward to this day.

18           Even as a teenager, he began his first involvement  
19 in animal rights, animal-related activities. At 15 years  
20 old, he joined the National Wildlife Federation and the  
21 Audubon Society. He was involved in school.

22           And yet at the same time, Your Honor, that he was  
23 doing these things, he's described as being too introverted  
24 and too gentle and that other children were consistently  
25 taking advantage of him. His sister remembered that he was

1 a person who could never say no. The fact is that perhaps  
2 one of his greatest strengths, one of the things that made  
3 people like him the most is, in this case, his greatest  
4 weakness, that he had this unconditional loyalty to others.

5 When Kevin graduated high school, money -- there  
6 wasn't a whole lot of money in the family, and he enrolled  
7 at the University of Nebraska, Kearney State College. And  
8 he discovered there that he had a passion for theater arts  
9 and for philosophy. And he pursued those two passions,  
10 those two interests. In fact, his -- his theatrical skills  
11 were awarded when he was a freshman for the Alpha Phi Beta  
12 Society -- National Honors Society.

13 But it was more than what he was doing  
14 academically. One thing I should point out, Your Honor, is  
15 that from the time Kevin was a teenager, he worked. There  
16 is, in fact, only two gaps in his work history. One, as we  
17 will talk about in a moment, is when he was staying out at  
18 Warner Creek, and the current one is now, since he's been  
19 incars -- since his arrest. He worked in high school. In  
20 college, he worked. In his second year as a junior, he was  
21 hired as a TA and -- or not -- I'm sorry. Not TA. An RA.  
22 And was responsible for the dorm.

23 But something major happened in Kevin's life in  
24 his junior year. In his junior year, he decided to accept a  
25 transfer to Humbolt State University. And again, I just

1 point, for the record, in the government's memorandum, they  
2 indicated that he graduated from Humbolt State. That is not  
3 true. He was there for one year. In fact, he originally  
4 went out to Humbolt State with the intention of only staying  
5 for one term, and did extend that for a full year.

6 Kevin relates to me -- I asked him how he ended up  
7 going to Humboldt -- picking Humboldt as a school, because,  
8 again, you know, being from Oregon, we have a sense of what  
9 that university -- that school is like and what it's known  
10 for.

11 Kevin saw a map, saw a school, saw a dot for  
12 Northern California, thought that he was going to be near  
13 San Francisco, and just chose that. So when he got to  
14 Humbolt State, Your Honor, he literally had no idea of the  
15 sort of culture, environment that he was coming into. And,  
16 again, as an intelligent, alert young man, he fell in. He  
17 continued to work, but he fell in. He was amazed by all the  
18 people that were doing tabling, tabling for every group  
19 there was and, particularly, tabling for animal rights  
20 organizations. And because he had -- already had this  
21 passion, this love of animals, when he first discovered  
22 PETA, when he first discovered EarthFirst!, these were  
23 things that interested him.

24 He made another discovery, Your Honor, one of many  
25 there. He discovered marijuana. Had never had it -- used

1 marijuana before. Unfortunately for him, he discovered that  
2 he liked it, and it became an habitual problem up until the  
3 time of his arrest. And it's certainly a piece of his life  
4 that he regrets, but also, not as any excuse, explains a lot  
5 of the things that happened to him later on.

6 But Your Honor, there was another discovery that  
7 he made, this book, and a professor. This book literally  
8 changed his life, Your Honor. This is a book that, when he  
9 read it for the first time, discovered -- and for him it  
10 truly was a discovery, that not only were animals loving and  
11 gentle creatures, but they were sentient beings. That they  
12 were no different, no less than you or I. And this -- not  
13 only was this a realization for him, but it changed his  
14 life. He became a vegan. From an individual who had grown  
15 up in Nebraska eating beef, he swore off.

16 And after his year at Humboldt, he returned to  
17 Nebraska, and his family noticed that there was a change in  
18 him. But he was still the gentle Kevin that they had always  
19 known. But, you know, they weren't upset. They weren't  
20 disturbed, but they noticed that there was a change.

21 His senior year in college, back in Kearney --  
22 Kearney was significant. Shortly after school started, he  
23 became involved in another theatrical production, *The*  
24 *Crucible*, and a few days before the premiere, his father  
25 died. It was very sudden, very unexpected, and it had a



1 major impact on him.

2 One thing I forgot to mention, Your Honor, is I  
3 think I read somewhere, perhaps in the government's memo,  
4 they were trying -- they were suggesting that there was a  
5 distance between Kevin and his father. There wasn't a  
6 distance, Your Honor.

7 THE COURT: I didn't read that, so --

8 MR. FRIEDMAN: Okay.

9 THE COURT: -- if it was there, it didn't have an  
10 impact on me.

11 MR. FRIEDMAN: Okay. What I'd simply want to  
12 point out is Kevin, in fact, had considered going into the  
13 military as -- like his father had; in fact, had been active  
14 in ROTC when he was in high school and sort of been  
15 considered a geek as a result -- because of it and  
16 considered enlisting in the Marines but essentially was  
17 talked out of it by his mother, who did not want him to do  
18 that, and he ended up in college instead.

19 But my point is that his father was a very  
20 significant figure for him. And when his father died, he  
21 lost that central role. He lost a very significant, central  
22 role. And yet there's a story that we have to relate that,  
23 even though his father had passed away, he drove down to  
24 Omaha to attend the funeral. He then turned around and  
25 drove right back up so that he could be there for the



1 premiere of this play that he was in, out of his duty, out  
2 of his loyalty to the people that he was with in the play.

3 It was also in his senior year at Kearney that  
4 Kevin became involved in his first animal action. And what  
5 that was, there was a shoot-on-sight rule for crows.

6 (Reporter interrupted.)

7 MR. FRIEDMAN: Shoot-on-sight.

8 THE COURT: Shoot-on-sight.

9 I really -- honest to gosh, I read everything  
10 everybody gives me. I could recite back that he went back  
11 to go to *The Crucible* to be in that play. I can recite this  
12 back to you, just as I can recite Ms. Gerlach's for  
13 tomorrow. The only thing I haven't seen in Ms. Gerlach's is  
14 the video, which I will watch tonight. I read every word  
15 that's filed, so you don't have to read it out loud to me.

16 MR. FRIEDMAN: And I'm not trying -- what I'm  
17 trying to do is --

18 THE COURT: I'm going to tell you, if you are  
19 going to do what you are highlighting, we are going to be  
20 here until way into tomorrow, because you wrote a long memo.

21 MR. FRIEDMAN: I apologize.

22 THE COURT: No. No. I'm fine with it, but you  
23 are hitting highlights in a condensed part of a very large  
24 memo, and you have a long way to go.

25 MR. FRIEDMAN: I will do that, Your Honor, because

1 what I want to get at, Your Honor, is how someone like Kevin  
2 Tubbs ended up being involved in these kind of actions. And  
3 the sense of it is, and, again, as the court well knows, he  
4 got involved in animal actions. The extent of his  
5 involvement grew exponentially. The fact is that when he  
6 became involved with -- after college, became involved with  
7 PETA, he did a variety of actions; basically, again, sort of  
8 more drama, more designed to elicit publicity. But, again,  
9 this was something that was very close, deep to his heart,  
10 because his goal was to raise public awareness and to help  
11 those that were -- could not speak for themselves.

12           There are some wrong terms. And, again, this  
13 is -- so I don't repeat what's in the memo, I just want to  
14 emphasize that it was also around this time that perhaps the  
15 creature that became his closest friend, his dog, entered  
16 his life, Peugeot. And it was also around this time, Your  
17 Honor, that he suffered a significant loss. There was a  
18 house fire. And it was at that house fire that the police  
19 came and they found three marijuana plants. And that's the  
20 basis of the conviction that the court -- that counsel has  
21 referred to in this case. Possession of three marijuana  
22 plants, which apparently under Nebraska law considered more  
23 than a pound.

24           This involvement with PETA, civil disobedience,  
25 he's encouraged to do this. Everything around him tells him

1 that this is a positive, constructive action. And I'm not  
2 here to debate whether some forms of civil disobedience are  
3 right or other forms of civil disobedience are wrong, Your  
4 Honor. What I simply am trying to impress upon the court  
5 here is that, one, they encouraged his arrests; and two, so  
6 that the court clearly understands, the places where the --  
7 the actions that perhaps the government has described as  
8 throwing urine on a police officer or dumping cat excrement,  
9 that simply is not the way it happened. What actually  
10 happened was that yellow water was thrown, was spilled to  
11 represent -- to represent cat urine. That kitty litter was  
12 dumped. These were actions, again, designed to raise public  
13 awareness, publicity.

14 And, again, it's Kevin being drawn closer and  
15 closer into this knit in which the people that he's in  
16 contact with are sort of reaffirming that this type of  
17 action is right, this type of action is proper. And there's  
18 this -- sort of this gradual escalation that's occurring,  
19 from dressing up in a cow costume to being arrested at a  
20 protest in front of a pharmaceutical company. That  
21 escalation is encouraged by the people that he was with.  
22 And he spends a summer involved in that, working for PETA in  
23 D.C., and when that job ends with the girlfriend that he's  
24 met there, a woman named Sis (phonetic) Anderson, he gets a  
25 job, gets an offer of a job in Eugene working for

1 EarthFirst!, for the *EarthFirst! Journal*. And he's already  
2 aware of them, has already come across them, had already  
3 attended a meeting where he had heard Darren Thurston speak,  
4 and thought it sounded great.

5 So he came out to Eugene for the first time. And  
6 his only contacts in this town are his girlfriend, who  
7 hasn't been here before, and this radical community that  
8 evolved around EarthFirst! down in the Whiteaker area. And  
9 this is pre-Warner Creek. He works there, has a very  
10 short-term job, and his hope was that the job would -- where  
11 he is an editor would blossom into something greater. But  
12 it's not, because essentially what the job is designed for  
13 is to bring people in, to indoctrinate people into these  
14 activities, into these actions with EarthFirst!.

15 And without a job, without a place to live, he's  
16 forced to live out of his car. He and his girlfriend are  
17 forced to live out of his car. He gets by with Dumpster  
18 diving, and it's through that that he makes some of his  
19 first contact with Jacob Ferguson who, as time goes by,  
20 becomes -- for the most part, becomes his one and only  
21 friend in Eugene.

22 And when he's -- when he asks if he can stay, camp  
23 on the grounds of the EarthFirst!, he's told, no. No. But  
24 there's this action starting. There's people that are  
25 moving to a camp up in Warner Creek. And really having no

1 idea what it's about, he goes up there. And he's up there  
2 for a long time, Your Honor. And yes, I will agree with the  
3 government when the government points to the fact he made  
4 connections there. There were a number of people that he  
5 met at Warner Creek. Kevin was not a leader. Kevin was not  
6 an organizer up there. In fact, I note from the video clip  
7 that the government showed this morning, the inference that  
8 somehow there's leadership, I think the leadership is  
9 pointing out perhaps where axes and picks are, at most.

10 But Kevin was also encouraged at that point to  
11 take risk, and as you saw in the video, and actually, I will  
12 note in a video clip that we are going to be showing, he's  
13 up on that same bipod structure. He's encouraged to take  
14 the risks for the cause. For the cause. He becomes a tool,  
15 Your Honor. Not a leader, not an organizer. Just simply a  
16 functionary. And for someone like Jacob Ferguson, that's  
17 exactly what he's looking for, is a tool. Somebody that  
18 will be there at his disposal, at his beck and call.

19 After his stay up at Warner Creek, Your Honor,  
20 Kevin moved back down to Eugene, got a job as an office  
21 cleaner, is living for a short period of time with his  
22 girlfriend, Sis, and the relationship that had been going on  
23 for about a year and a half, almost two years, breaks up,  
24 ends, ends quite suddenly, and for Kevin, it's quite  
25 devastating when it ends, because, Your Honor, what Kevin



1 discovers is that the people that he thought were his  
2 friends, people that were associated with Warner Creek,  
3 people that were associated with this radical community,  
4 since Sis's new boyfriend was somebody that was apparently  
5 more favored within the community, they chose sides, and the  
6 side they chose was hers. And Kevin, again, found himself  
7 alone and isolated in a town in which he had no connection.  
8 And he worked. He worked hard. Managed to get by, taking  
9 on a second job after a while. Trying to medicate himself  
10 with marijuana.

11 And the only person that was there, the only  
12 friend that he had, was Jacob Ferguson. And Jacob Ferguson  
13 is an individual who has an interesting background.  
14 Jacob Ferguson has an interesting background. In fact, of  
15 all the people that are involved in these actions, I think  
16 what the court may discover, and perhaps the court already  
17 recognizes, is that we basically have a pretty middle class  
18 group of folks. Jake is the -- Jake Ferguson is the  
19 exception. He's the guy that came from the wrong side of  
20 the tracks. He's the guy who firearms, explosives, and  
21 things like that are nothing new to him. Something that he  
22 freely admits in his statements to the government.

23 I have got -- I just put up here a little brief  
24 portion of the -- Mr. Ferguson's 302, and he's just sort of  
25 relating what his background is. And the fact of the matter



1 is, Your Honor, that his background is -- he knows about  
2 explosives. He knows about pyrotechnics. He's the fellow  
3 that introduces Kevin to the zines.

4 Now, I'm not sure if the court's familiar with the  
5 zine scene, and the fact is we are talking about a period of  
6 1995 going into 1996. If you think back, Your Honor, this  
7 was a period of time where, while the Internet has started  
8 to blossom, it's not -- it's certainly not where it is  
9 today. And so a lot of the radical information was being  
10 publicized through these zines that you could pick up just  
11 about at any -- a lot of the bookstores. They were things  
12 that were freely available in many places down in the  
13 Whiteaker area. They weren't hard to find.

14 And amongst them were zines that talked about how  
15 to make destructive devices, these -- these devices that  
16 Kevin freely admits he later used at the Echo Dairy, the  
17 Dutch Girl dairy. This was something that had been provided  
18 to him by Jacob Ferguson.

19 Your Honor, Kevin steps off into this radicalized  
20 community, encouraged by the only friend he had, thinking in  
21 perhaps the most -- in hindsight, it just seems so  
22 outlandish that someone would -- could believe this, but  
23 somehow thinking that by causing destruction at the dairy  
24 that he would win back his girlfriend. That she would see  
25 him as this radical activist, and that the guy she had taken

1 up with was not the man that he was. It's ludicrous. It's  
2 a ludicrous idea, Your Honor. But that's what was going on  
3 in his mind. And that was an idea that was encouraged by  
4 Jacob Ferguson.

5 With that, Your Honor, I'd like to turn to the  
6 incidents with which Kevin is charged. I have provided to  
7 the court, and we are going to put up here a -- what we call  
8 a roles worksheet. What we have attempted to do is distill  
9 from all the 302s the various roles that different people  
10 played on not all the actions, but certainly a significant  
11 number of the actions in which -- certainly all the ones in  
12 which Kevin is charged today and all the significant pieces  
13 that involve arson.

14 Now, the first amongst these, aside from Echo  
15 Dairy, and, again, I don't think there's any disagreement  
16 that Kevin was responsible for the Echo Dairy. And --  
17 however, it is outside the scope of these proceedings.

18 The first action was the Detroit Ranger Station,  
19 and that was an action in which Jacob Ferguson and Suzanne  
20 Overaker -- I'm sorry -- Sunshine Overaker and a woman known  
21 as Raven were responsible for. And what happened there,  
22 Your Honor, was that Jacob Ferguson, wishing to do harm to  
23 the -- wishing to do harm, wishing to do mischief, really  
24 can't be sure, recruited a woman named Raven to drive his  
25 car -- to drive her car, in fact, up there.

1           And we submit, it is identical to what  
2   Mr. Ferguson did three days later with Kevin Tubbs. Now, we  
3   know here, this is one of the -- this is a place within the  
4   discussion that the government clearly disagrees. The  
5   government says that Kevin Tubbs was responsible for  
6   creating the -- the device. And what they have done is they  
7   have pointed to -- they have attempted to point to a  
8   similarity between the device that was used at Echo Dairy  
9   and the device that apparently was used at the Oakridge.  
10   And what they have relied upon, I believe, Your Honor, is  
11   Kevin's 302. Kevin's 302. First of all, we'd submit that  
12   that's not admissible. That's the only evidence that they  
13   have of the type of device.

14           But there's more than that, Your Honor, that would  
15   suggest that the government is just flat-out wrong in terms  
16   of determining what Mr. Tubbs' role was in this particular  
17   incident, because the fact is that where Mr. Tubbs lived at  
18   that time, he had a number of roommates, and it would have  
19   been virtually impossible for him to have created these  
20   devices the way Mr. Ferguson suggests that he did.

21           The fact is that he was simply a tool that was  
22   used by Mr. Ferguson to create a fire. He did nothing more  
23   than drive the vehicle out there, not even knowing why he  
24   was going out there. He had been out there. There's no --  
25   we are not disputing the fact that he had been out there on

1 a previous occasion with some other people where apparently  
2 there had been some spray-painting and things like that.  
3 But the fact of the matter, even in terms of trying to  
4 define a cause for this, Mr. Tubbs did not know what  
5 Jacob Ferguson had already done at Detroit Ranger Station.  
6 And what he did know was that -- the success that had  
7 already occurred with the result of the legislation -- or  
8 the litigation regarding Warner Creek. So there wasn't a  
9 motive there, Your Honor, and it's significant in terms of  
10 understanding how Kevin ends up being there.

11 For Mr. Ferguson, we are not in any position to  
12 explain Mr. Ferguson's thinking in this. Why he would --  
13 why he would cast Kevin in a worse light other than to  
14 suggest that he's trying to diminish his own responsibility.  
15 But the other thing that is very significant, Your Honor, is  
16 as we look at all these other incidents where Kevin was  
17 involved, I don't think that there's a whole lot of dispute.  
18 There may be some dispute with regard to Cavel West in terms  
19 of Kevin's actual role, and I think it's more of technical  
20 argument than a factual argument. But with regard to every  
21 other incident, I think there is agreement with regard to  
22 the facts. And we can establish that not only, obviously,  
23 from what Mr. Tubbs said, but what all the other people that  
24 have submitted information to the government have said in  
25 these cases.

1           Finally, Your Honor, what I'd suggest, again,  
2     considering Oakridge and considering Jacob Ferguson in this  
3     case, I know full well that the court is well aware that  
4     people -- that deals -- wonderful deals are made all the  
5     time in pursuit of an investigation of a case. The only  
6     thing we would ask this court to keep in mind in looking at  
7     this chart is understanding what a critical role  
8     Jacob Ferguson played, not merely in Oakridge, but in all  
9     these other instances as being the primary motivator, the  
10    primary person who was out there in terms of choosing  
11    targets, in terms of recruiting people, in terms of building  
12    these devices.

13           The other thing we'd suggest, again, just  
14    backtracking for a moment with regard to Oakridge, is the  
15    fact that Ferguson's claim is that Tubbs wanted to build the  
16    device because he was better able -- he believed he was  
17    better able to do it, but, again, as we have just shown with  
18    that statement from Mr. Ferguson, he's the one who had the  
19    expertise, he's the one who had the knowledge. It just  
20    would -- doesn't make any kind of logical sense to think  
21    that he would defer to Mr. Tubbs in building a device in the  
22    situation we are at, particularly where it's what  
23    unfortunately ends up being such a significant, significant  
24    fire.

25           Your Honor, I'd like to turn to Cavel West. And

1 the first thing I need to point out, you know, Kevin Tubbs  
2 was involved in a lot of incidents. We know that. But as  
3 the government was perhaps suggesting yesterday with regard  
4 to Mr. Meyerhoff, there is sort of this acceleration for --  
5 in terms of his culpability where it kind of goes like this,  
6 escalating, escalating to the point at which he is --  
7 whether he would do it or not, who knows -- thinking about  
8 actually hunting down people and killing them. The fact of  
9 the matter, for Mr. Tubbs, is the exact opposite. There's  
10 decline. Yes, it stretches over a long period of time, but  
11 his role is less and less and less to the point at which he  
12 is trying, desperately trying to withdraw from these  
13 incidents.

14 Almost a year -- not -- not quite, but almost a  
15 year passes before Cavel West occurs, and in that time, Your  
16 Honor, Kevin becomes aware of the slaughterhouse. And,  
17 again, as we submit to the court, it is critical to  
18 understand his thinking about animals and his love of  
19 animals, and the thought that horses are being slaughtered  
20 is just literally too much for him. It's overpowering.

21 I have a very brief video which I would like to  
22 show the court now. And I -- I will preface this. This is  
23 an excruciating video to watch. It shows horse slaughter.  
24 But you have got to understand that someone like Mr. Tubbs,  
25 who feels so deeply, who values life so greatly, is moved to



1     tears by the death of any creature, how the idea that horses  
2     like this could be treated, is just too much.

3             I apologize in advance.

4             (The video was played; not reported.)

5             THE COURT: If it's just more than one episode, I  
6     have seen it.

7             MR. FRIEDMAN: Okay. It's multiple repeats of  
8     horses going through this.

9             I simply -- I simply offer that, Your Honor, to --  
10    so the court can understand what the true motivations were  
11    for Mr. Tubbs. Your Honor, Mr. Tubbs has freely  
12    acknowledged his responsibility for identifying the  
13    location. We saw -- there was an article we heard about  
14    that appeared in *The Register-Guard*. He saw it. He went  
15    out there with his dog, saw this building, saw the horse  
16    pens, wondered whether there was any way that the horses  
17    could be released from these pens. Realizing the size of  
18    the facility, the location of the facility, thought that it  
19    was useless. Thought that perhaps the only thing -- and,  
20    again, we fully acknowledge, he wanted to do something, he  
21    wanted to do something. But it was his belief that perhaps  
22    all that could be done was that it could be tagged, graffiti  
23    could be put on these buildings. That there was no way to  
24    safely free these horses because they were right within or  
25    close to the town. That there were railroad tracks, a road.

1 He did. He talked to two other people, Your Honor. He  
2 talked to his old friend, Jacob Ferguson, and he talked to  
3 Joseph Dibee. It probably was a big mistake having those  
4 conversations with them. He knew at that point that  
5 Ferguson was prone to fire starting but still didn't believe  
6 that anything like that was possible. What he didn't  
7 understand or realize, I guess, at that point was  
8 Mr. Dibee's ingenuity, and the fact was that Joseph Dibee  
9 conceived a plan and that Joseph Dibee, if there was any  
10 leader, any coordinator in this action, it was Mr. Dibee.  
11 It was Mr. Dibee who came up with this idea of drilling  
12 holes in the building. It was Mr. Dibee who conceived the  
13 idea of creating this -- what they call this vega gel for  
14 introducing into the building. Ferguson definitely played a  
15 considerable role in terms of creating the timing devices.

16 All Kevin Tubbs did was tell two people that there  
17 is horrific horse slaughter taking place at Cavel West. And  
18 all Kevin Tubbs desired to do at that point in time, Your  
19 Honor, was end that horse slaughter.

20 He certainly was not thinking, considering, wasn't  
21 even in his vision the notion that somehow that where the  
22 horses came from or how -- how -- what impact this might  
23 have on the facility.

24 And I think he's perhaps as stunned as anyone, in  
25 terms of discovery, what Mr. Dibee was capable of doing. I

1 think there is some evidence that perhaps has been offered  
2 by other counsel in this case that indicate -- that actually  
3 indicates that the horses were not horses that came off --  
4 off of public lands. That they were purchased privately.  
5 And, again, I would submit that that was not something that  
6 was on Mr. Tubbs' radar at all.

7           It was also Mr. Dibee that, in turn, contacted  
8 Jonathan Paul, and it was Mr. Paul, I believe, that perhaps  
9 brought in Ms. Kolar. There's no question that Mr. Tubbs  
10 started a chain of events, but his role in this was nothing  
11 more than to identify the site and then to eventually act as  
12 a driver and a lookout for this action.

13           Your Honor, with regard to the Burns BLM facility,  
14 first of all, we would submit that information that was  
15 derived from Mr. Tubbs' proffer cannot be used in this case.  
16 What we submit is that, again, if there was -- if there was  
17 any goal in this, and there's been reference to -- obviously  
18 to the communiques that were written after Cavel West, the  
19 communique that was written after Burns. There's no mention  
20 whatsoever with regard to the Cavel West communique relating  
21 to government or government action. It is strictly speaking  
22 to the slaughter of wild horses.

23           With regard to Burns, and, as I say, I will have  
24 legal argument in a little bit as to whether or not the  
25 terrorism enhancement can apply to this situation or to

1 Oakridge. The fact of the matter is that the goal was to  
2 stop horse slaughter. And there wasn't any intent in terms  
3 of doing harm to anyone. This was a site that was  
4 originally found by Jacob Ferguson when he -- apparently he  
5 had a habit of driving around trying to find places that  
6 could be attacked or places where animal releases could  
7 occur.

8 And at that time, Mr. Rodgers was involved in  
9 this, and it was -- Mr. Rodgers was Mr. Ferguson's roommate.  
10 And so it is a fairly safe presumption that it was  
11 Mr. Ferguson that brought Mr. Rodgers into this action. It  
12 was Mr. Ferguson that decided that the fire could take  
13 place, and it was Mr. Rodgers who determined -- who figured  
14 out a way of opening up the corrals so the horses could be.

15 Again, Mr. Tubbs' role here was solely to drive.  
16 And, again, you know, we sort of have this overall theme in  
17 terms of Kevin is sort of being brought along on these  
18 actions as someone who is a useful tool, since he is willing  
19 to drive and, unfortunately, because his network of friends  
20 is awfully small. He is essentially trying to satisfy the  
21 needs of others. And if I haven't mentioned it in the past  
22 few minutes, I will mention it again. You have got to  
23 understand that Kevin is someone who certainly at this point  
24 in his life was still dealing with a rather deep depression.  
25 And the -- the approval that he received from these other

1 people was significant. Yes, there's no doubt that in his  
2 mind, the fact that it was designed to save animals was --  
3 was so, so important. But it was also the approval that he  
4 received from his friends.

5 Your Honor, for Mr. Tubbs, there is significant  
6 change. He continues -- while all these things are going  
7 on, he's working two jobs, basically getting by. Just  
8 getting by. And, you know, periodically, again, we have got  
9 almost a -- over a year later with the U.S. Forest  
10 Industries in Medford occurring, this -- this being an  
11 incident in which, again, Mr. Ferguson recruits,  
12 Mr. Ferguson conceives, Mr. Ferguson gets Kevin to drive.  
13 And fortunately for Mr. Tubbs in this case, when he actually  
14 drove out there, they weren't successful. This was simply  
15 an attempt on a -- on that facility. Apparently if you --  
16 after Mr. Tubbs had left, in fact, had gone to Nebraska to  
17 visit family, as counsel has indicated, Mr. Ferguson went  
18 back, and with the help of, I believe Ms. Tankersley,  
19 actually got -- started the fire and got it to burn.

20 Childers Meat is a site that Mr. Tubbs  
21 acknowledges he identified. There was an occasion around  
22 May 9th which was, unfortunately, Mother's Day, in which a  
23 number of people had gotten together. And again, you know,  
24 one of the things that's important for the court to  
25 understand is Kevin sort of is the central role; whereas,

1 all these other people are sort of coming and going from  
2 Eugene. Kevin's the guy that stays here. He's always here  
3 throughout this whole course of events. In fact, I'm sure  
4 the court is well aware of this: When people were arrested  
5 back in December of '05, Kevin was arrested here in  
6 Springfield at his work, whereas other people came and went.  
7 And that's essentially what had occurred with regard to  
8 Childers. It was a -- a tragic concurrence of these people  
9 all being in town at the same time, "these people," I mean  
10 Mr. Meyerhoff; Ms. Gerlach; Mr. Ferguson; Ms. Overaker;  
11 another person, Louise; and Mr. Tubbs, and there being --  
12 and actually, I believe there was -- there may have been  
13 another person as well. These people came together, and  
14 there was a desire to do something.

15 I can't completely rationalize that, Your Honor.  
16 I can't completely understand, and I don't intend to make it  
17 any more sensible to the court than it is. It was -- these  
18 are stupid acts. The butcher shop, the meat company, was  
19 identified, and, again, for -- it was identified by  
20 Mr. Tubbs because this was -- this was an institution that  
21 profited from harm to animals, harm to cattle. And a plan  
22 was conceived and devices were built by Mr. Ferguson, and I  
23 don't think Mr. Meyerhoff actually built devices in this  
24 instance. And Mr. Tubbs drove them out there and they set  
25 these devices. And we know what resulted. Again, there



1 clearly was not -- no intention to do harm to anyone. And,  
2 you know, the court -- I can certainly appreciate that the  
3 court rejects the notion that steps were taken to avoid  
4 injury. That accidents could have always occurred. But  
5 thankfully, they did not. And they did not occur here  
6 either. But, again, it's simply critical to understand that  
7 Mr. Tubbs identified the site and drove out there.

8           Your Honor, I've got to say that after Childers  
9 Meat market, everything else that Mr. Tubbs was involved in  
10 is just plain-out stupid. There is no reason that he could  
11 have or should have said yes when asked to participate. He  
12 was trying to pull away, was trying to withdraw and, in  
13 fact, had avoided other actions. He had avoided the  
14 Y2K-type actions when he had been asked. He had been asked  
15 to participate in the BPA and had said no. He had been  
16 asked to participate in other actions and had said no.

17           But in September of 2000, in fact, on  
18 September 5th of 2000, when Stan Meyerhoff came to him and  
19 said, we need a lookout, we are going to do -- you know, we  
20 are going to do something, Kevin had no idea why or what.  
21 Basically, he felt a duty, a loyalty. And although he  
22 indicates that he initially resisted, he gave in. You  
23 simply have to appreciate the person that Kevin Tubbs is to  
24 understand that under pressure of a friend, out of a duty of  
25 loyalty, you'd say yes to something that you know full well

1 is stupid and purposeless. But he did. He acted as a  
2 lookout that night. He did not withdraw.

3 But he clearly, and this is quite important, Your  
4 Honor, he didn't even have any idea why they were doing it.  
5 It was simply something that, when asked, he said yes. And  
6 his role was extremely minimal, a matter of biking over to  
7 13th and Alder and standing there and watching while  
8 Mr. Meyerhoff and Ms. Gerlach left their bikes with devices  
9 on them. He wasn't even aware of exactly what they were or  
10 what the devices were.

11 Again, I don't know that other than trying to put  
12 Kevin's role in perspective, Your Honor, I can truly explain  
13 why Kevin was involved in some of these actions. And  
14 Superior Lumber is -- is just such a situation. It wasn't  
15 something that he had any involvement in terms of planning.  
16 It was something that was put together by Mr. Ferguson and  
17 Mr. Meyerhoff and Ms. Gerlach. Apparently, you know, we  
18 know from the 302s, or at least from Mr. Ferguson's 302,  
19 that it was a site that was identified by Ms. Tankersley.

20 He was recruited, and he acted as a lookout. And  
21 other people that Kevin didn't even know at the time, that  
22 being Mr. McGowan and apparently Ms. Savoie, were brought in  
23 as well. Again, these were people that Kevin could never --  
24 that Mr. Tubbs had never met before, but there they were.

25 Romania Chevrolet. Mr. Tubbs is facing, I forget

1 how many counts, 35 counts with regard to this fire. From  
2 the 302s, it indicates that someone had withdrawn -- in  
3 fact, I think it's from Mr. Ferguson's 302s, he states that  
4 there were not going to be any local people involved in  
5 this, and that's why he did not participate in Romania  
6 Chevrolet.

7           We don't know exactly who it was. You know, we  
8 can speculate that perhaps it was Mr. McGowan that was  
9 supposed to have participated in this one but did not. What  
10 we do know is that, again, at the last minute, when Stan  
11 Meyerhoff tells him, hey, we have got this whole thing and  
12 we need a lookout, Kevin succumbs to that pressure and says  
13 yes, I will do it. These are not rational acts, Your Honor.  
14 But, again, in terms of what role Kevin actually played in  
15 these things, it's critical to understand that.

16           You know, I don't think that it was even until we  
17 had a chance to start looking at the discovery in this case  
18 that Mr. Tubbs even had a clear idea of what aims were  
19 intended by this. He played no role -- no part in the  
20 communique. Again, his participation was the night before  
21 being contacted by Mr. Meyerhoff to show up and to jump in a  
22 van and jump out and stand at a telephone station across  
23 Franklin and just be the lookout. But he had no sense of  
24 what reasons anyone would want to do this. Certainly had no  
25 idea, even in terms of who was doing what in this incident

1 other than the fact that he was asked by Mr. Meyerhoff.

2 The fact is that Mr. Tubbs did not even know who  
3 this Free and Critter were. He was not part of that  
4 community.

5 He also stands charged in this case with multiple  
6 counts with regard to Jefferson Poplar. And, again, this is  
7 one where, you know, through the course of the plea, it was  
8 necessary for Mr. Tubbs to acknowledge that he did play a  
9 role in this. But what the court needs to understand is  
10 Kevin's role in Jefferson Poplar was so minute, what he did  
11 was he was asked about six months before, back in September,  
12 October of 2000, he was asked by Mr. Meyerhoff to go with  
13 him to Clatskanie, Oregon. And he went there. Drove down.  
14 In fact, he -- they drove down with a bunch of people. It  
15 was -- Meyerhoff drove, and Ferguson and McGowan and Savoie  
16 and Mr. Tubbs. And when they got there, it was after dark.  
17 Kevin did not even get out of the car that night. And then  
18 they drove back up -- or back down to Eugene.

19 In January of 2001, Meyerhoff, maybe Ferguson,  
20 it's not -- we're not quite clear on this, came back to  
21 Kevin's house to let him know that apparently they had  
22 decided that they weren't going to do Jefferson Poplar. And  
23 that is the last that Mr. Tubbs ever heard of that. He did  
24 not -- was not there, did not participate. It was eight  
25 months later, in May of 2001, that apparently Mr. Meyerhoff

1 and all the other people went to Jefferson -- went to the  
2 Jefferson Poplar facility. Kevin did not go.

3 We talked about, briefly, that there are other  
4 uncharged, including the Echo Springs Dairy, incidents with  
5 Kevin. Kevin's other involvement were animal releases, mink  
6 farms, and, again, I would submit that he did this out of  
7 his love, his caring for animals. The Palmer, he was there  
8 and acknowledges that he was there for the APHIS attempted  
9 arson or arson, I'm not quite sure, in Olympia, Washington.  
10 Again, this was an action that was planned, and to the  
11 extent it was executed, it was executed by Mr. Ferguson with  
12 some assistance from Mr. Rodgers. It's one -- it's a  
13 situation where everything that could have gone wrong went  
14 wrong.

15 The government's also referred to the BLM corral  
16 at Rock Springs, Wyoming. Again, it was a situation where  
17 nothing happened. There's been some reference that Kevin  
18 had involvement in Vail. We submit the only thing Kevin  
19 Tubbs did that is at all related to Vail is background,  
20 October 10th or 11th, I guess about October 10th, he drove  
21 with Jacob Ferguson, and obviously I don't recall who else  
22 was in the van with him, he drove straight through from  
23 Eugene, Oregon, to a rest stop some distance from Vail.  
24 Again, this was at the direction of Ferguson. Got to this  
25 rest stop and fell fast asleep.

1           And the next thing he remembers is he woke up, and  
2 they were in Wyoming, and they were at the Rock Springs at a  
3 campground that was adjacent to the Rock Springs facility.

4           That is the extent that Kevin had any involvement  
5 whatsoever in Vail. I hope I have made it clear to the  
6 court in terms of what Mr. Tubbs' motivation was with regard  
7 to all these incidents. I just -- you know, it really boils  
8 down, in so many ways, to simply trying to give a ride to a  
9 friend or acting out of a duty of loyalty. The actions in  
10 which Kevin participated and participated in any kind of  
11 active way, Your Honor, were those actions that were  
12 relating -- that relate to animal rights, animal cruelty,  
13 animal freedom. Those are the things that meant something  
14 to Mr. Tubbs.

15           These other actions, these so-called ELF actions,  
16 if he was there, when he was there, he acted out of blind,  
17 dumb loyalty. He acted out of a feeling that the only way  
18 I'm going to have anything in my life is by helping these  
19 people. And Your Honor, in 2001, that began to change. Or  
20 actually, in late 2000, that began to change for him,  
21 because it was at that point in his life that he met his  
22 fiancée. And it wasn't immediate. It took some time for  
23 him to -- for them to develop their relationship and for him  
24 to feel comfort in that.

25           There is, and we -- we need to talk about this,



1 there is the Litchfield BLM incident, which is late in  
2 2000 -- or in October of 2001. He had -- at that point in  
3 time, although I don't believe that they were living  
4 together yet, he had started to have a relationship with  
5 Michelle Page. And, again, you know, when asked, but  
6 essentially the only close friends that he's had for many,  
7 many years, he says, yes, and he drives. That's what he  
8 does. He drives.

9 But the other thing is Kevin had begun, at that  
10 point in time, although he had been trying to withdraw and  
11 trying to exit from this association with these friends, he  
12 told them at that time at Litchfield, that's it. No more.  
13 I'm out. Don't call me. Don't ask me.

14 He never participated, Your Honor, in any of these  
15 Book Club meetings, never even heard about -- never even  
16 heard it called the Book Club. Had been asked, had been  
17 asked to join these things, and he flat-out refused, because  
18 that was not what was part of him.

19 There is a suggestion that Mr. Tubbs continued to  
20 be active. That he continued to try and participate in  
21 the -- in these -- at least maintain some loyalty. And I  
22 recall at the end, the government has a -- showed a slide in  
23 which Mr. Tubbs shows -- showed a connection with all these  
24 other people, being Mr. Ferguson, Mr. Meyerhoff, and  
25 Ms. Gerlach, and Ms. Thurston, and I believe Mr. Paul.

1           The reality is that he is not the individual who  
2 could turn his back on a friend. And yes, he continued to  
3 see them occasionally. Ms. Gerlach became a DJ and  
4 apparently gave -- did house concerts, things like that, in  
5 Eugene. And so when she was in town, he would -- he would  
6 have -- they would get in touch, and he'd see her. Again,  
7 there was nothing, nothing to suggest anything other than  
8 a -- a saying hi, how are you. Nothing nefarious about it.

9           The other thing I want to talk about just briefly,  
10 Your Honor, is the government has tried to suggest that  
11 Kevin had this greater role because there were these birth  
12 certificates and these IDs and things like that that he was  
13 either responsible for or, at the very least, had in his  
14 possession.

15           There's really only two things I need to say.  
16 First of all, these birth certificates, that birth  
17 certificate, that was something that was provided to him by  
18 Mr. Ferguson. It was not something that he created on his  
19 own. His knowledge of creating false IDs, again, this was  
20 information that was provided to him, taught to him, I  
21 guess, by Mr. Ferguson. It was not something that he  
22 generated on his own. And the identifications that were  
23 found in his property at the time of his arrest, he wasn't  
24 involved in any group. He wasn't trying to secret fugitives  
25 out of the country. Had he turned his back on friends? No.

1 Was he about to assist somebody in any kind of action or  
2 even assist them realistically in any type of endeavor to  
3 avoid -- avoid prosecution? No.

4 Your Honor, the fact is that when Mr. Tubbs was  
5 arrested on -- in December 5th, 2005, obviously he was  
6 shocked because this was something that was past. It was  
7 well in his past. And he hoped, he hoped that he would --  
8 you know, he knew he had done terrible things. But he hoped  
9 that it would be something that would be forever behind him.

10 And he talked at great length with his old friend,  
11 Mr. Ferguson. And Mr. Ferguson acted at the government's  
12 direction in talking with Mr. Tubbs. And there's -- there's  
13 been an attempt to suggest, from some of these  
14 conversations, that Kevin was still this -- this true  
15 believer. That Kevin was still there. And what I have got  
16 to say is Kevin knows, he understands that he's caused a  
17 great deal of harm. But at the same time, if you were to  
18 ask him, did the action to save an animal, was that -- was  
19 that completely wrong, he can't reject that. He's not going  
20 to reject that. He's going to reject the tactic. And  
21 that's what, in terms of conversation that occurs between  
22 Mr. Ferguson and Mr. Tubbs, that's what he's talking about.  
23 He's not talking about this span of activity. What he's  
24 talking about, Your Honor, is did he do anything that was  
25 perhaps still right, still, in a distorted way, justified?

1 I think he can say that that -- that was. And he's prepared  
2 to pay the price for that, for saving those animals. What  
3 he doesn't want this court to do is enhance his role beyond  
4 what it really needs to be.

5 What I'd like to ask the court now is I have got a  
6 video, just to give you a little idea of his family and his  
7 background. And then we have got one, his fiancée, who  
8 would like to speak, and then I would like to deal with some  
9 of the legal issues in this case.

10 (The Video was played; not reported.)

11 MR. FRIEDMAN: I'd ask Michelle Page to come up.

12 MS. PAGE: My name is Michelle Page, P-A-G-E. And  
13 I have been in a relationship with Kevin since 2001. I feel  
14 that I know him better than most people know him, because I  
15 know who he is now and I know who he has been for the last  
16 six years, and I just wanted to take this opportunity to  
17 speak to Kevin's character and to the life that he was  
18 leading with me prior to his arrest in December of 2005.

19 Kevin is one of the most sensitive people I have  
20 ever met. He is uniquely gentle, and he is uncommonly  
21 generous, and he cares deeply about what happens to others,  
22 whether they are human or animal. He has always been drawn  
23 to helping those who have no voice or whose voices have been  
24 silenced, and it's one of the things that I love the most  
25 about him. His kindness and his compassion speak volumes.

1 Kevin is known by his friends and family to be a  
2 gentle, soft-spoken individual with a strict adherence to  
3 nonviolence. He has a long history of using peaceful means  
4 to educate the public on many important issues, and he has  
5 worked on behalf of both humans and animals. He has devoted  
6 much of his time and energy into rescuing and rehabilitating  
7 stray cats and dogs.

8 As I was going through our photos recently, I came  
9 across dozens of pictures of dogs that Kevin and I had  
10 picked up off the streets and taken care of while we were  
11 searching for their human companions or finding them new  
12 homes.

13 Despite having been steadily employed for the last  
14 21 years, Kevin has always taken time out of his personal  
15 life to help others. He's the kind of person who would give  
16 you the shirt off his back or the last dollar in his pocket  
17 if you were in need.

18 His arrest came as a complete shock to me, to our  
19 family, and to all of the friends who are a part of the life  
20 that we have created together. The crimes to which he has  
21 pled guilty occurred years ago, and I believe he is a much  
22 different person than he was then. These crimes seem  
23 antithetical to the nature of the person that I have shared  
24 my life with over the last six years.

25 He never once spoke to me about his involvement in



1 these illegal actions, and nor did he allude to his  
2 participation in them. I understand now that his decision  
3 to keep all of this from me is a testament to the fact that  
4 he had left all of that behind.

5 Kevin had clearly moved on in his life. I never  
6 could have imagined our life taking such a devastating turn.  
7 For years, Kevin and I were both working hard, saving our  
8 money, and planning for our future. We were thinking about  
9 getting married soon and starting a family.

10 The Kevin that I know and love is a very  
11 dedicated, hardworking, and loyal person, and I believe his  
12 loyalty to his friends drew him into activities that he  
13 otherwise would have had nothing to do with.

14 I think Kevin had long since realized that actions  
15 such as these do so much more harm than they do good. I  
16 believe that he is sincerely remorseful for the role that he  
17 played in these crimes and the resulting damage that was  
18 done. He recognizes the tremendous harm that he has caused  
19 as a result of his actions. In the thousands of pages of  
20 letters that we have exchanged since his arrest, I have  
21 never seen or felt so much sadness.

22 He never should have allowed himself to get swept  
23 up in a movement of people who felt it necessary to use  
24 arson as a means to draw public attention to some of the  
25 serious problems that are facing our generation. Not only



1 were his actions counterproductive, they were reckless, they  
2 were dangerous, and they were stupid.

3 He is very aware of the pain and suffering he has  
4 caused, not only to his family, but to the victims of the  
5 crimes that he participated in. He has suffered greatly  
6 over the last year and a half as a result.

7 He's made some very serious mistakes, and he is  
8 prepared to serve the sentence that is handed down to him.  
9 The seriousness of the crimes must be the basis for his  
10 punishment, because there is no threat of recidivism, and he  
11 was deterred long before his arrest.

12 I am only asking that you please take into  
13 consideration Kevin's character, his withdrawal from the  
14 movement, and the quiet, peaceful life that we were living  
15 together prior to his arrest.

16 His decision to cooperate with the government  
17 early on in this case has further isolated him from the  
18 community of people with whom he had identified during that  
19 period in his life, and it has put him at great risk in the  
20 prison. He's experienced harassment already while being  
21 housed at the federal detention center in Sheridan.

22 I'm very concerned about Kevin's safety in prison,  
23 and I hope that you will do everything you can to see to it  
24 that he's designated to a low security facility.

25 Thank you for your time.

1 MR. FRIEDMAN: As Ms. Page has just alluded to,  
2 Kevin Tubbs has been cooperating with the government in this  
3 case, and that cooperation has not -- unfortunately, has not  
4 gone unnoticed. The fact is that when he was at Sheridan,  
5 he -- I guess there were some other folks there that had  
6 seen some articles. Some articles had been sent into the  
7 prison. And he was -- fortunately, he wasn't seriously  
8 abused, but he was targeted. In fact, you know, he had been  
9 here in Lane County now for quite a number of months. But  
10 shortly before he left the Sheridan Detention Center, I  
11 think it was a Mr. Laskey, you have heard that name before,  
12 the neo-Nazi, had just been sent up there, and I guess he  
13 had seen -- he went up with the knowledge, the information  
14 that he had gotten from the Eugene papers about Mr. Tubbs  
15 and Mr. Tubbs' cooperation, and that got spread out around  
16 and he became a target. And he -- fortunately, at one  
17 point, they finally moved him to the other section there for  
18 his safety, but it's been a difficult go of it.

19 I know the court has seen this article, and I know  
20 it was shown yesterday. This is from the -- I believe it's  
21 a fairly recent *EarthFirst! Journal* of June 2006. And the  
22 article specifically references Mr. Tubbs. The highlighting  
23 doesn't come up, but Mr. Tubbs' is mentioned, and, again,  
24 this is that same piece, the same piece in terms of  
25 basically threatening physical harm to anyone that has

1 cooperated with the government in this type of a case or any  
2 case. We are certainly -- you have heard a lot of testimony  
3 yesterday with regard to the need for protection, and we  
4 would certainly ask this court to consider Mr. Tubbs in that  
5 same circumstance as Mr. Meyerhoff, needing protection  
6 within the -- the prison population. We are certainly  
7 hoping that the court can take whatever steps it can to  
8 ensure that Mr. Tubbs is placed in an appropriate and safe  
9 environment, and we'd ask that the court consider, as you  
10 indicated yesterday for Mr. Meyerhoff, writing a letter on  
11 his behalf and perhaps asking the U.S. Attorney's Office to  
12 write a letter as well.

13 When we had first been negotiating this case or  
14 actually getting close, I know the government had indicated  
15 that they might be willing to do that, and we would  
16 certainly ask them to do that as well.

17 Your Honor, we did send some corrections --  
18 objections to the draft PSR, and I know that they were  
19 received late by the PSR writer, and that was because of a  
20 family emergency that came up for me. So I was out -- I  
21 lost a week on this case. We did forward that. And I know  
22 that the -- Mr. Purdue had indicated that he would try and  
23 address those concerns in a supplemental. And when I spoke  
24 with him this afternoon, he indicated that he had not had a  
25 chance to do that. What I would ask the court to do in this

1 circumstance, then, is consider those comments as part of  
2 the PSR. And I would just like to address a few very -- the  
3 bulk of our concerns were related to factual issues that we  
4 had disputes over. And I don't know the extent to which  
5 those are going to get resolved here today. Partly -- a lot  
6 of it is, again, similar to the issues that we have with the  
7 government's representation of what role Mr. Tubbs played  
8 and certainly representations as far as what he did versus  
9 perhaps what Mr. Ferguson has indicated.

10 But of particular concern, on Page 5, Paragraph  
11 29, there is a reference to a trail of terror to influence  
12 the government and when violence ended, and we would ask  
13 that that kind of language be stricken. I mean, it's just  
14 an unnecessary rhetorical flourish to the document. As the  
15 court well knows, since the PSR is used as a bible for BOP,  
16 that kind of information could be quite devastating.

17 Additionally, there is a reference on Page 20,  
18 Paragraph 96, to a sophisticated device with regard to  
19 Oakridge. And, again, as we have submitted to the court --  
20 as we have argued to the court already, that Mr. Tubbs was  
21 not responsible for that -- the device that was set at  
22 Oakridge. We would further submit to the court that even  
23 characterizing that as sophisticated, again, given the way  
24 that BOP tends to overinterpret certain language, we would  
25 ask that that sort of language be stricken.

1           Additionally, depending upon what we have  
2 indicated in our letter on the PSR, is that the court direct  
3 the PSR to be revised as to its findings with regard to the  
4 terrorism enhancement and specifically with regard to the  
5 application. And what we would submit, Your Honor, is  
6 should the court find that the terrorism enhancement does  
7 not apply or specifically does not apply to certain of the  
8 incidents in this case, that that language also be stricken  
9 from the -- from a final PSR that would be submitted to the  
10 court, and that's something that comes up a number of times.

11           What I would like to do at this point, unless --  
12 there's one other thing, Your Honor. We have submitted, as  
13 part of our memorandum, a fairly lengthy section on  
14 sentencing disparity.

15           And I don't know whether the court wants to hear  
16 more on that or not. I do have the -- the expert available  
17 who helped us prepare that. And essentially what we -- what  
18 we did was provide the court with information to compare  
19 what typical sentences were for arsons and arsons where the  
20 terrorism enhancement had been applied and, particularly,  
21 consideration with regard to cooperation and where -- how  
22 those people fared. And, again, I would leave it to the  
23 court. I can -- I am certainly prepared to provide that  
24 further evidence on that, if the court wants, or leave it as  
25 presented within our memorandum.



1 THE COURT: If there's something more that needs  
2 to be told. Otherwise, if it's just going to be read out  
3 loud to me, I don't need to have that.

4 MR. FRIEDMAN: Actually, the witness would be here  
5 simply to explain if the court had any questions. If the  
6 court doesn't, I'm fine with that.

7 THE COURT: No. No.

8 MR. FRIEDMAN: Thank you.

9 Then, Your Honor, what I'd like to do is -- what I  
10 have provided here, Your Honor, is a -- is an offense  
11 calculation. What we have done is provide our calculation  
12 under the guidelines and, alongside that, placed the  
13 calculations that came out of the PSR. And what we have  
14 hoped to show by this is that, with limited exceptions,  
15 there is not a whole lot of difference. Obviously, the  
16 application of the terrorism enhancement is significant with  
17 regard to each of the substantive offenses. But absent  
18 that, there are -- we are very close.

19 And I guess what I'd say specifically with regard  
20 to Oakridge, where there's an indication -- the government  
21 has indicated that -- or the PSR writer, rather, has  
22 indicated a two-point enhancement for planning, we would  
23 submit that this -- again, there was -- certainly on  
24 Mr. Tubbs' part, there was absolutely no planning at all.

25 Additionally, the information with regard to --



1 any information that was received from Mr. Tubbs with regard  
2 to this calculation or the government's calculations in this  
3 case should be stricken, as it was received through the  
4 course of the proffer.

5 And, again, I will address whether or not the  
6 terrorism enhancement applies on that one in a moment.

7 With regard to the 844 -- with regard to Cavel  
8 West, again, the basic calculation that we have, the base  
9 level is identical. We would submit that it is appropriate  
10 to add two points for planning with regard to Cavel West  
11 since it was Mr. Tubbs that identified that site. However,  
12 we would disagree with the PSR writer with regard to any  
13 leadership role. He played no leadership role in that. As  
14 we have indicated, it was Mr. Dibee that was the primary  
15 organizer. He was the person that came up with the plan.  
16 The only thing that Mr. Tubbs did at Cavel West was act  
17 as -- locate the site, yes, but then act as a lookout and  
18 driver. Beyond that, he played no role.

19 And, again, we would submit here that the  
20 terrorism enhancement should not apply. There is -- again,  
21 we would assert that any evidence that comes from  
22 Mr. Tubbs's proffer is inadmissible. And with regard to the  
23 motivation, we would submit that there has not been evidence  
24 that somehow, way, shape, or form that there is a  
25 terroristic motivation; in other words, motivation inclined

1 to influence government or retaliate against government or  
2 intimidate government.

3 So we would submit that the enhancement should not  
4 apply there. What we have done at the side there -- so,  
5 again, our adjusted offense calculation level is 21 there.  
6 The government's, again, absent the terrorism enhancement,  
7 absent the leadership role, we are -- we concur.

8 With regard to the BLM at Burns, again, the base  
9 level is identical. We would submit that 20 -- a level 20  
10 is the appropriate. And we would agree that there is --  
11 again, as the PSR writer has indicated, there is no  
12 leadership role. There is no planning.

13 The only issue here is the application of the  
14 terrorism enhancement on this case. And, again, as I will  
15 submit, first of all, evidence of the motivation, any  
16 information that came from Mr. Tubbs would be inadmissible.  
17 The only basis would be the -- the communicate. And we would  
18 assert that the communicate does not provide clear and  
19 convincing evidence of an intent to influence -- influence  
20 government. And, again, I will have a little bit further  
21 discussion on whether the enhancement can apply to  
22 844(f)(1), the substantive counts, in a moment.

23 U.S. Forest Industries, the attempt. Again, we  
24 are concurring with the PSR writer with regard to base  
25 level. It appears that 20 is correct. Again, we would

1 agree that there is no planning role, there is no leadership  
2 role. The sole issue is the application of the terrorist  
3 enhancement here, and we would submit that there has not  
4 been -- there is no clear and convincing evidence that would  
5 support that. And once again, Mr. Tubbs' statements should  
6 not be admissible.

7 And, again, one of the things I suppose I have  
8 said many times before this afternoon, but it is critical  
9 that the court specifically consider Mr. Tubbs' role in each  
10 of these offenses in terms of deciding whether or not, even  
11 if the court were to otherwise find application of the  
12 terrorist enhancement, whether that enhancement should apply  
13 specifically to Mr. Tubbs.

14 Go down.

15 Again, with regard to Childers Meat, the only  
16 issue -- the only issue here, I think, is property -- is the  
17 amount of property damage, and our information and what we  
18 originally based it upon was the discovery that we had  
19 received, and the discovery that we had received, I've got a  
20 little overhead that will show that in a moment, indicated a  
21 lesser value. And that's why we had a base level of 18.  
22 Again, you know, if the government -- if the PSR writer is  
23 correct with regard to that, then we would concur that the  
24 adjusted level is 21 -- it's either 20 or 21.

25 Go down.

1           The EPD Station, again, base level, we have a  
2 concurrence. We have -- there was some question in our mind  
3 whether or not this should be a level -- base -- excuse  
4 me -- a base of 20 as opposed to a base of 6. We are  
5 prepared to concede that a base level 20 is probably  
6 appropriate. Again, we would agree that there is no  
7 planning, there is no leadership role for Mr. Tubbs here.  
8 Again, the sole question is the application of the  
9 enhancement. I am well aware, obviously, that the court  
10 perhaps has made some findings in this -- with regard to  
11 this incident already. We would submit that this is not a  
12 terrorist act, and certainly when we look at Mr. Tubbs' role  
13 and his knowledge in this, it's -- it's essentially absent.  
14 He is simply the guy that gets asked at the last minute to  
15 show up and does.

16           Superior Lumber. Again, we have concurrence with  
17 regard to a base level of 19. Again, there's some question  
18 with regard to the value of the property damaged, and there  
19 still may be some question with regard to that. What we  
20 would submit, Your Honor, though, that the PSR writer's  
21 suggestion of a -- two points for planning with regard to  
22 Superior Lumber is inappropriate. Again, Mr. Tubbs played a  
23 very limited role in this, and we would suggest that the two  
24 additional points are not appropriate.

25           Additionally, we would submit, Your Honor, again,

1 that the terrorism enhancement does not apply. There is no  
2 indication that there was any intent to -- any essentially  
3 terroristic motivation in this case, and we would ask the  
4 court to not impose that here.

5 So essentially we are coming up with a -- again, a  
6 very similar adjusted base level. Again, I have got three  
7 options there, and I think it really boils down to the  
8 question of the damages and consideration of whether or not  
9 Mr. Tubbs had enough of a role to be responsible for any  
10 planning in this.

11 Again, Romania is one where base level, we would  
12 concur on. Again, when we were doing this, there was still  
13 more of an issue in terms of the property, the amount of  
14 damage. We would agree that 19 is the appropriate base  
15 level.

16 We would submit, Your Honor, that Mr. Tubbs should  
17 not be responsible for any planning role in this. The only  
18 thing he did was yield to a friend and show up and stand  
19 there for a few minutes as a lookout. He played absolutely  
20 no role in the organization of this. This was  
21 Mr. Meyerhoff's and other people's action -- excuse me --  
22 action and certainly was not Mr. Tubbs' action at all.  
23 Further, we would emphasize that given Mr. Tubbs's very,  
24 very limited role in this, that the terrorism enhancement  
25 should not be applied to him specifically in this case, and



1 we would ask the court to not do so.

2 And finally, with regard to Jefferson Poplar,  
3 again, we have concurrence with regard to a base level of  
4 19. We would submit, again, this is one where Mr. Tubbs was  
5 not even present at the time of the action. His -- the only  
6 thing he did was some six months earlier go to the site in  
7 which he didn't even leave the car. We would submit that  
8 that does not constitute planning, and therefore, the  
9 two-point adjustment is inappropriate.

10 Further, with regard to the terrorism enhancement  
11 there, we would submit that, you know, as Mr. Tubbs played  
12 absolutely no role in this -- in this action, that it would  
13 be inappropriate to apply that enhancement to him in this  
14 case.

15 Again, what we have got there is just simply the  
16 government's calculations.

17 Go down.

18 And then finally, sort of the -- the multiple  
19 count adjustment, again, taking the greater of the counts,  
20 we submit that an adjusted level of 21 is appropriate. We  
21 would submit that absent the terrorism enhancement, the  
22 government's calculation, their greater -- greater adjusted  
23 role is 23. We had initially calculated a combined offense  
24 level of 5. I am less certain of that right at this moment  
25 whether or not that's -- that's right. It might be. It



1 might be less. And I certainly would leave the court -- but  
2 we do obviously acknowledge that a combined offense level  
3 does apply in this case.

4 Our calculation -- again, our calculation comes up  
5 to a base level of 26. The government's, absent the  
6 terrorism enhancement, is 28. The -- I'm sorry. The PSR  
7 writer's, absent a terrorism enhancement, is 28, or 40 with.  
8 45 is what the government says. Three points off for  
9 acceptance of responsibility, leaving total offense levels  
10 of -- for -- under our calculation, 23, under the  
11 government's and the PSR writer's calculation, either a 25  
12 or a 37, and then the government is 42.

13 The government initially had indicated that they  
14 would offer -- they would ask the court to grant 12 levels  
15 down for substantial cooperation, and we would certainly ask  
16 this court to grant -- Mr. Tubbs has substantially  
17 cooperated in this case. I mean, he's done everything he  
18 could. I know that from the letter that they sent to the  
19 court that they were indicating perhaps that there were was  
20 some minimization on his part of his role, but what I would  
21 submit, Your Honor, is it's not minimization -- he's not  
22 attempting to minimize his role in any way, Your Honor.  
23 What he is simply trying to do is be truthful about what his  
24 role was, and if that doesn't exactly concur with the way  
25 the government sees it from, you know -- essentially from

1 Mr. Ferguson, that doesn't constitute minimization.

2 Otherwise, he has been completely cooperative. He  
3 did, of course, wait until he had an opportunity to talk to  
4 an attorney, and, as his attorney, I thought it would be  
5 prudent to have an opportunity to see some of the discovery  
6 before I could recommend to a client to cooperate with the  
7 government or not. So I certainly don't think that is  
8 anything that should be taken against Mr. Tubbs in this case  
9 and certainly would ask the court to grant him substantial  
10 cooperation in this case.

11 Finally, Your Honor, in the opinion that you  
12 issued earlier in the week, you indicated that the 844(f)(1)  
13 counts do not apply because the conspiracy extended beyond  
14 the date of the adoption of the Patriot Act, and therefore,  
15 they don't apply.

16 But you left open the question of whether or not  
17 those same acts can be separately considered. And what we  
18 would submit is a couple things. And I -- I will tell you,  
19 at this point, I'm not sure whether or not -- I know there's  
20 one other counsel that may -- certainly has some interest in  
21 this particular legal issue. So I'm not sure whether or not  
22 they want to chime in. But let me try and address that as  
23 best I can.

24 The fact is that under Rule 1B1.11(3), the  
25 sentencing guidelines, indicates that the court is to use

1 the same set of guidelines if there are multiple counts.  
2 And as this court has essentially already indicated -- and,  
3 again, we understand that the guidelines are not the same  
4 as -- as statutes. However, the issue is that the  
5 guidelines essentially incorporated any change in the  
6 statute. And on October 31st of 2001, those are the  
7 guidelines. Again, it's the November -- November 2000  
8 guidelines we are using, but we are using them at the date  
9 of the last act. The date of the last act is October 31st,  
10 2001.

11 At that point in time, the Patriot Act had passed,  
12 but what the Patriot Act did specifically was exclude from  
13 the terrorism enhancement 844(f)(1) -- 844(f)(1) crimes.

14 We would submit that it would be inconsistent for  
15 the court to apply it in one case, in one situation under  
16 the substantive act and not in the other. And obviously,  
17 it's clear that it does not apply with regard to the  
18 conspiracies.

19 I understand that it's not a clear-cut situation  
20 here, Your Honor. This certainly is something that is quite  
21 foggy. And it's in just these situations, Your Honor, that  
22 the rule of lenity must be applied, and we would submit that  
23 that is the appropriate resolution of this matter, and that  
24 would argue that this court has to decide that those counts  
25 cannot be subject to the enhancement.

1 Further, you know, the guidelines talk about the  
2 application -- you know, what happens when there's an ex  
3 post facto issue. And I guess what I'd submit, Your Honor,  
4 is we almost have the inverse of that, whereas rather than a  
5 more severe situation applying than not, we have a less.  
6 And we would submit, Your Honor, that, again, the defendant  
7 is entitled to that benefit.

8 Unless -- again, unless the court has further  
9 questions on that, that is my argument with regard to the --  
10 that application there.

11 That's all I have.

12 THE COURT: Mr. Engdall, did you want to respond?

13 MR. ENGDALL: Unless the court has some questions,  
14 we'd reject the notion of counsel. The court has made its  
15 decision with regard to the application of the terrorism  
16 guideline.

17 I would like to comment, though, that the notion  
18 that the defendant just gave rides out of loyalty to friends  
19 time after time after time after time after time after time,  
20 and, again, without knowing or realizing that the  
21 individuals with whom he was involved before, the first time  
22 were involved with arsons and the second and the third is  
23 simply not credible. Mr. Tubbs knew well what -- what he  
24 was involved with. And to try to avoid the criminal  
25 liability and responsibility for his actions today I think

1 is -- is overreaching on the part of Mr. Tubbs.

2 THE COURT: Do any of the other lawyers need to  
3 enter into a discussion on the issue that was just raised?  
4 I don't know that it's necessary, but I just want to give  
5 you that opportunity.

6 MR. FEINER: Your Honor, I would not have anything  
7 to add to that, just reserving the right to present my  
8 information on Tuesday.

9 THE COURT: Okay. We'll take a recess. And I  
10 will let you know when we are coming back, but I have got to  
11 go do some calculations, and I wanted to listen to the  
12 argument, and then we'll begin and I'll be happy to hear  
13 from your client if he wishes to speak. All right?

14 Thank you.

15 We are in recess.

16 THE CLERK: Court is in recess.

17 (Recess.)

18 THE COURT: Please be seated.

19 Mr. Tubbs, I would like to know whether or not you  
20 have had a chance to read the presentence report in this  
21 case.

22 THE DEFENDANT: Um, I did about 30 days ago, a  
23 month ago or so.

24 THE COURT: And you have had plenty of time to  
25 talk it over with Mr. Friedman?

1 THE DEFENDANT: I did. I had a lot of concerns  
2 about it, and I think I read somewhere in the law library at  
3 Sheridan that I was supposed to see a final copy, like, ten  
4 days before the sentencing hearing, but I understand that  
5 Mr. Friedman hasn't gotten a revised copy back yet. So I  
6 haven't seen a -- if any changes have been made or not.

7 MR. FRIEDMAN: Your Honor, we had submitted our  
8 comments late, and it was my understanding -- we did receive  
9 a final, essentially unchanged version. And it was my  
10 understanding that we were going to be -- that there might  
11 have been a supplemental that was going to be provided, but  
12 that apparently didn't --

13 THE COURT: Mr. Friedman, it was impossible when  
14 it was received on a date that gave Mr. Purdue no time in  
15 which to make those corrections. And what I indicated --  
16 Ms. Wood yesterday made objections and asked for revisions  
17 in the presentence report. And she will submit those in  
18 writing, and we will take a look at those. I made notations  
19 while she made the objections, and I have talked to  
20 Mr. Purdue. And it was my intention to indicate that  
21 Mr. Purdue still has a need to respond to those objections,  
22 and we were going to respond in writing and make the changes  
23 as appropriate, in our view, after hearing from Mr. Purdue  
24 and in the context of your objections. So we would intend  
25 to do that. If your client wants to set over sentencing to



1 make sure he sees a final document, you should talk to him.  
2 Otherwise, I'd ask him to waive any formality or any  
3 objection to that and let us proceed. But if he wants to  
4 set it over and have that final version, that's fine with  
5 me.

6 THE DEFENDANT: We can go ahead. We can go ahead,  
7 Your Honor.

8 THE COURT: And you understand how we'll proceed?

9 THE DEFENDANT: Not exactly.

10 MR. FRIEDMAN: It's -- let me explain. It would  
11 be my understanding, then, that we would submit our  
12 objections in writing?

13 THE COURT: My understanding is your objections  
14 have been filed in writing, right?

15 MR. FRIEDMAN: Yes, they have.

16 THE COURT: And Mr. Purdue has those under  
17 advisement, but certainly hasn't had the opportunity to  
18 provide a final written, either correction or modification  
19 or substantiation to the court so that we can make a  
20 determination.

21 MR. FRIEDMAN: Okay. Do you understand?

22 THE DEFENDANT: That's fine, Your Honor.

23 THE COURT: So do you waive any objection to  
24 seeing the final presentence report? It's my view, in  
25 looking at the letter that was -- that came in late, that it

1 may assist with having a final document that guides the BOP,  
2 but I don't know that it's going to have a tremendous impact  
3 on what the sentence will be in this case.

4 Is that a fair summary of the objections as you  
5 glanced through the document that Mr. Friedman filed?

6 MR. PURDUE: Yes, correct. I believe that a  
7 number of those objections have been brought before the  
8 court today in his argument.

9 THE COURT: Anything else?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Is there anything you want to tell me  
12 before I impose the sentence in this case?

13 THE DEFENDANT: Yeah. I have prepared a little  
14 statement. And before I start my statement, I do want to  
15 point out that in it I -- there's several different issues  
16 and concerns that had helped convince me earlier to get  
17 involved with my codefendants, and I described what made me  
18 feel so sad, scared, overwhelmed, and hopeless that I felt  
19 that desperate and extreme actions were necessary.

20 But I want to point out to you and to emphasize to  
21 the court and to everyone listening that I mention these  
22 problems not as an excuse for my actions nor in any way to  
23 justify any of the crimes that I was a participant in. I  
24 don't feel they were justifiable. But I mention them,  
25 rather, just to try to give people an understanding of some

1 of the concerns that were going on in my head, where I was  
2 coming from, and how I got to where I am today, and let  
3 people know what motivated me to make some of the choices I  
4 did and why I felt such urgency and desperation and why I  
5 felt that, in the absence of action, the future looked  
6 bleak.

7           Despite my role in arsons, whether I was just a  
8 lookout, just a driver, or even in the incident like  
9 Oakridge Ranger Station where I didn't know what was going  
10 to happen, I want to say that I'm disgusted, sickened,  
11 saddened, and totally ashamed that I played any part in any  
12 of the incidents.

13           And after I heard Ms. Ledbetter and Mr. Sullivan  
14 talk this morning, I think that's their names, from the  
15 Oakridge Ranger Station, I almost decided not to say my  
16 statement at all, because, um, it seems like what was  
17 concerning me and what was bugging me is so insignificant  
18 and irrelevant to the damage and the pain and the suffering  
19 that other people went through. But after lunch -- during  
20 the lunch break, I was thinking about it, and I thought, not  
21 for myself, but just in case you want to know or anybody in  
22 the audience or anybody wants to know where I'm coming from  
23 and what motivated me, I decided to read it anyway. But I  
24 want to in no way to belittle or -- belittle the real  
25 victims of these crimes or try to justify it, because that's

1 not my intent. So thank you.

2 Um, first of all, I'd like to apologize to all of  
3 the people and their families who were affected by these  
4 crimes. I am truly, deeply sorry and regretful. I'd also  
5 like to apologize to my mom, sister, niece, to my beautiful  
6 and dedicated fiancée, Michelle, and to my family and  
7 friends. And I'd like to thank them for all of their  
8 unconditional love and support.

9 Words cannot express how truly sorry I am to the  
10 victims of these crimes, for the loss that they, their  
11 colleagues, and their families experienced. This is  
12 especially saddening to me, because in an idealistic effort  
13 to help reduce destruction and sorrow in the world, I ended  
14 up creating a different but equally troubling kind of  
15 destruction and sorrow. This is unfortunate because, in the  
16 crimes that I was a participant in, I was only motivated by  
17 a passion to save animals' lives and a desire to help the  
18 environment so that we could pass on a healthy and more  
19 vibrant earth to our children and to future generations.

20 Though my actions were wrong and misguided, I  
21 always acted out of love, never hate or retaliation or anger  
22 at anyone. And other than a deep loyalty to my friends, a  
23 little bit of peer pressure, I was spurred on and motivated  
24 by the continual and enormous scale of ecological  
25 destruction taking place, as well as the extreme cruelty and

1 disregard for -- for all animals and life forms that is so  
2 prevalent today.

3 We are facing a planetary emergency, but like the  
4 fish who can't see the water because they are immersed in  
5 it, we too are mostly blind to the ecological destruction  
6 and the suffering of millions of animals around us.

7 As we too are immersed in that, and sometimes we  
8 just choose not to see it, our beautiful and life-giving  
9 earth is sick. Nearly all of the rivers that provide us  
10 with fresh drinking water are polluted and nearly -- and  
11 recently 100% of the fish that were caught and tested from  
12 rivers throughout all of North America were all found  
13 contaminated with PCBs, fire retardants, and other toxic  
14 chemicals. The oceans are heavily polluted, phytoplankton  
15 are dying and disappearing, and fish stocks are collapsing.

16 Excuse me.

17 Oxygen-giving forests in the U.S. and around the  
18 world are being cut down, both legally and illegally, for  
19 short-term economic gain. Ice shelves and glaciers are  
20 melting at an unprecedented rate, and fish, bird, and mammal  
21 species teeter on the brink of extinction, with many being  
22 pushed over that brink one individual animal at a time.

23 We sit back and watch helplessly or read about sea  
24 turtles, marbled murrelets, owls, whales, polar bears, and  
25 dozens of other animals getting pushed closer and closer to



1 extinction, and it is now predicted that before the first  
2 half of this century is over, nearly 30% of all of the  
3 species on this planet will be near extinction. We are left  
4 sitting as impotent observers, watching daily as these  
5 problem neither slow down, stop, nor reverse course, but  
6 they continue on, giving us a bleak and a depressing view of  
7 the future.

8 I love America, and we are all very blessed to  
9 live in this country, but our wealth helps insulate us from  
10 the extreme and dire consequences of these issues. But more  
11 and more, we too are starting to suffer from the effects.  
12 The earth's temperature continues to rise, the world's  
13 fisheries are depleted, water pollution is endemic, and  
14 topsoil is eroding at an alarming rate. And locally right  
15 here in Oregon, both our health and our economy are  
16 suffering from collapsing salmon runs and fish stocks to  
17 water shortages and ocean dead zones to food that pregnant  
18 women and children are warned not to eat.

19 And now government consultants and NASA  
20 administrators are warning us that climate change bringing  
21 severe draught, devastating floods, and widespread hunger  
22 and disease to our children and grandchildren is a national  
23 security risk, one far greater, they say, than even  
24 terrorism.

25 None of these facts excuses my behavior or makes



1 any of the actions that I helped out with all right,  
2 helpful, or acceptable. Nor does the scale or the  
3 seriousness of these problems justify such drastic, hurtful,  
4 and destructive measures. But it does illustrate just a few  
5 of the many reasons of what my intent was and what had  
6 motivated me to help participate in these actions and join  
7 others in a desperate but counterproductive and futile  
8 effort to raise awareness.

9 As these problems got worse, action was a reprieve  
10 from hopelessness, despair, and cynicism. It's as if the  
11 ecological destruction and the cataclysmic events that  
12 follow it are a huge train bearing down on us and we are  
13 asleep on the tracks. I was just trying to do my part to  
14 help wake us up. It's in everybody's interest if we wake up  
15 and address these issues.

16 Yesterday, Your Honor, you said that the reason we  
17 don't yell fire in a building is because it causes people to  
18 panic. And though I didn't intend to cause anyone to panic,  
19 I think my intent was to wake people up, alert them, raise  
20 consciousness, and spark discussion on these issues.

21 When I helped out with these actions, my only  
22 intent was with altruistic intentions. I had nothing to  
23 gain personally from helping out. Not money, not glory, not  
24 fame.

25 My intent was never to scare or to harm anybody,

1 nor was my intent to seek retribution against anybody. But  
2 it was just a desperate and naive effort to try to save some  
3 animals' lives and try to wake us up and raise the  
4 consciousness to problems that affect us all and, more  
5 importantly, will be affecting our children and  
6 grandchildren.

7 My behavior, though inexcusable and completely  
8 reprehensible, was a desperate plea to try to alert people  
9 and warn people about what type of legacy and what type of  
10 world we want to pass on to future generations.

11 I mention all of this not to make a political  
12 statement, nor to make excuses for my behavior, which I  
13 concede was ignorant, thoughtless, stupid, and shortsighted.  
14 But I mention it, rather, with a hope that some of these  
15 issues are addressed and that corrective action is taken.  
16 Otherwise, I fear a new generation will make the same  
17 mistakes that we did and take their concerns to the  
18 perceived source of the problems in an effort to address  
19 these issues rather than to a courtroom or to a legislature.

20 The magnitude and scale of these global problems,  
21 along with my innate sensitivity, love, and concern for  
22 animals who have no voice of their own, my concern for our  
23 earth and for future generations blinded me to the real harm  
24 and the negative repercussions that my participation in  
25 these events would bring to those people who were victimized

1 by these actions.

2           Though I never started any of these fires myself,  
3 I completely and totally regret taking any part in any of  
4 these incidents, no matter how small the role. And I'm  
5 deeply sorry to all of those people whose lives were  
6 permanently and negatively affected by them. Over the last  
7 several years, efforts by Sir Richard Branson, Al Gore,  
8 Woody Harrelson, and Barack Obama, as well as thousands of  
9 other less famous but equally concerned citizens has shown  
10 us that there is hope for the future and that there is a  
11 better way to address these problems without being  
12 destructive and without violating other people's rights.

13           I just wish I would have found a better and more  
14 civil way to address these issues, such as through  
15 legislation, like the current bill to ban horse slaughter,  
16 and through the judicial system, which are not only more  
17 civil, but tend to have bigger, more positive, and  
18 longer-lasting results.

19           Again, I want to deeply apologize to all those  
20 people who were affected by my participation in these  
21 actions, and I want them to know that I'm truly very sorry  
22 and very remorseful from the bottom of my heart for the  
23 personal loss and suffering that they have endured.

24           If I could go back in time and stop it all from  
25 happening again, believe me, I would, in a second, I

1 absolutely would.

2 I'd also like to apologize to my family, to my  
3 loving and beautiful fiancée, Michelle, and to my loved  
4 ones, and also to the court for having to deal with this  
5 issue. Please accept my regrets and my sincerest apologies.  
6 The writer of the book of Proverbs wrote in Chapter 24  
7 Verses 13 and 14, that honey is sweet to your taste. And so  
8 shall the knowledge of wisdom for your past mistakes be to  
9 your soul. If you have found it, there is a prospect or  
10 future hope, and your hope will not be cut off.

11 And to Judge Aiken, Your Honor, I beg and plead  
12 that you don't cut off our hope. I beg for your compassion,  
13 your understanding, some mercy, and forgiveness. I wish so  
14 badly I could go back and right all the wrongs that were  
15 done, but I can't. There's been enough pain, sorrow, and  
16 loss already. Too much. And for that I am truly forever  
17 sorry. I ask you, for my mother's sake, for the sake of my  
18 committed, faithful, and loving fiancée, Michelle, and for  
19 the sake of our future and our family together, to please  
20 don't cut off hope. Please tender your justice today with  
21 some forgiving mercy.

22 I hope that I have demonstrated, through my last  
23 five years of living peacefully in the community, becoming  
24 engaged, buying a home, and shunning all direct action, that  
25 I have proven my ability to live peacefully and productively

1 within the community and that I have rehabilitated myself  
2 from the days when I acted desperately, stupidly, selfishly,  
3 and recklessly, and that I have proven that I can be a  
4 positive and contributing member of society. But most  
5 importantly of all, I'd like to apologize to all the victims  
6 of these crimes and let them know that I'm truly deeply  
7 sorry and ask them to forgive me.

8 Thank you.

9 THE COURT: What you may or may not be aware of is  
10 that in Portland, small SUVs are being burned while we are  
11 in this process. Whether they are related or not, it really  
12 just doesn't matter. What you started is a chain of events  
13 that gives people the understanding that there is this  
14 widespread issue, there is a concern, and the only way to  
15 get people's attention is to take radical action. So  
16 throughout the State of Oregon, back east, the calls that  
17 come in are identifying Oregon with a place where, when you  
18 don't like how things get done, you start fires.

19 And what about the air? If you cared about the  
20 environment, why burn all that was going up in the air and  
21 polluting the environment? Incredible thoughtlessness.

22 None of you were martyrs. None of you should be  
23 celebrated for what you did. All of you should be given the  
24 consequences of action and told there are other ways. You  
25 cannot take action on your own and damage people's property



1 and the governmental process, period.

2 Your mother raised you to be better than that.

3 And until you were arrested, I suspect she knew none of  
4 this. I'm not going to ask you whether you talked to her  
5 about it or not. But I strongly suspect that if you had  
6 stopped for five minutes and said, gosh, my mother, who took  
7 in animals and strays and taught me to be caring, what would  
8 she think about what I'm doing, I suspect if you even asked  
9 yourself that question, you wouldn't be here today. And you  
10 are older than most of the people who will come before me.  
11 You knew better.

12 So after hearing everything today, I am simply  
13 struck by the differences in this sentencing from that of  
14 Mr. Meyerhoff. Mr. Meyerhoff, although denying the  
15 leadership role, fully and wholeheartedly accepted  
16 responsibility for his criminal behavior and condemned his  
17 prior action and those of his conspirators and expressed  
18 true remorse.

19 And I think you have attempted to do that today  
20 and I think you have made your best efforts. And I heard  
21 what you had to say. And I hope you are sincere. And like  
22 Mr. Meyerhoff, you too should be thankful that the  
23 government has been willing to offer and extend a negotiated  
24 resolution that does allow you to reenter the community and  
25 make amends.



1           They made a decision, they evaluated this case  
2 very carefully, and they concluded that there were  
3 consequences to extract, and, at the same time, when you  
4 came -- when you would have the opportunity to come back in  
5 the community, they saw something in you, or you convinced  
6 them that you will be a law abiding and contributing member  
7 of this society.

8           That is the best message you can provide to future  
9 generations: It simply wasn't worth it. There are other  
10 ways to help people see a different path.

11           But I do have to note that given the considerable  
12 length and depth of your involvement in these crimes and the  
13 uncharged relevant conduct, that, contrary to the repeated  
14 attempts to minimize your participation, the facts just  
15 simply speak otherwise.

16           I just have to call to your attention, I sat here  
17 throughout the hearing thinking, hmm, Mr. Tubbs, you have  
18 pled guilty to these offenses. It was almost as though you  
19 were denying much involvement. And that struck me this  
20 morning as I listened to your lawyer talk on and on.

21           I would have been more impressed had you simply  
22 said, this is how it is. I will take responsibility. And  
23 this -- one way or the other, I understand what I did, you  
24 need to understand why I did it. It was foolish. I will  
25 take my punishment like an adult and move on. I was struck

1 by there's still an attempt to minimize or to sort of hang  
2 on the fringe.

3           Regardless, I don't believe for one minute that  
4 you were an unwilling and passive participant in most of  
5 these crimes. It just, frankly, seems like you didn't want  
6 to get your hands dirty. Yes, you were often, if not  
7 always, the lookout man. But you also had the van that was  
8 fraudulently registered in another's name during the  
9 conspiracy that facilitated the crimes, rendering it most  
10 convenient for you to be the driver and the lookout.

11           And I find your actions in obtaining the  
12 fraudulent documents to be clear evidence of more than just  
13 tagging along. In fact, I find that you were a facilitator  
14 and an organizer. You clearly identified the Childers Meat  
15 Company and Cavel West. You recruited others, Rebecca  
16 Rubin, and possibly funded Mr. Meyerhoff so that he could  
17 train others, and provided fraudulent identification to  
18 others. And you agreed to become involved on your own  
19 accord, knowing your actions were wrong, knowing they were  
20 illegal, and knowing there would be a price to pay if you  
21 were caught.

22           As with your conspirators, you planned and  
23 committed acts of arson to intimidate and frighten people  
24 into changing their conduct. You succeeded in one respect.  
25 You frightened people and made them feel less secure in

1 their workplace and perhaps even their homes.

2 And, as you heard today, you even made lifelong  
3 forest service employees, people who are dedicated to public  
4 service, afraid to walk in the public forests. You  
5 destroyed their work, their possessions, and their sense of  
6 trust. And I find their appearance and words spoken today  
7 to be particularly courageous. And to further highlight the  
8 cowardice of your actions, it makes me wonder whether others  
9 who were victimized have not spoken out for fear they might  
10 be targeted again.

11 As I said yesterday, fear and intimidation can  
12 play no part in changing the hearts and minds of people in a  
13 democracy. Let me say it again. Fear and intimidation can  
14 play no part in changing the hearts and minds of people in a  
15 democracy.

16 I reject the notion that many of your actions were  
17 motivated by a desire to improve the plight of animals and  
18 the environment. Evidence of the arson of the Oakridge  
19 Ranger Station committed after the efforts of legitimate  
20 environmental activists and attorneys who secured a legal  
21 halt to the logging at Warner Creek says that. You saw  
22 firsthand that lawful and positive action in support of  
23 environmental protection could make a difference, and yet  
24 you chose the act of arson and intimidation to further your  
25 own interests, whatever those were.

1           In fact, your actions and those of your  
2 conspirators branded proponents of environmental protection  
3 as dangerous and irrational, thus making it more difficult  
4 for those who attempt to achieve their goals through  
5 legitimate means.

6           As with your conspirators, your actions were  
7 systematic, and you used fear and intimidation in an attempt  
8 to coerce others, including governmental employees trying to  
9 do their jobs and serve the public, into changing their  
10 behavior to achieve your goal.

11           Whether under the terrorism enhancement or an  
12 upward departure within my discretion, you must be held  
13 accountable for attempting to intimidate and retaliate  
14 against government agencies and private individuals and  
15 corporations.

16           Regardless of whether the target is private or a  
17 public entity, intimidation of one is equally reprehensible  
18 as the other. Everyone has a right to feel safe in their  
19 workplace, in their homes, and certainly within our public  
20 forests.

21           And contrary to your attorney's arguments, I do  
22 not need and need not rely on the government's  
23 characterizations of your actions to support my findings.  
24 Your actions speak for themselves. Any claim that your  
25 action at the Oakridge Ranger Station and the wild horse

1 corrals were not in retaliation against government conduct  
2 simply belies credibility, as evidenced by the location and  
3 timing of your actions and the words of the communiques, not  
4 by any, quote, slant, unquote, that the government proposes.

5           How can you possibly claim that you were not  
6 attempting to influence or retaliate against the conduct of  
7 government or others? The communiques express pride in  
8 destroying the, quote, horse murdering plant, unquote, and  
9 describe your efforts to halt the BLM's illegal and immoral  
10 business of rounding up wild horses from public lands and  
11 funneling them to slaughter. These actions are not attempts  
12 to raise public awareness.

13           Notably, I heard no mention that you began an  
14 awareness campaign to call attention to the inhumane  
15 treatment and slaughter of horses at Cavel West. You just  
16 thought torching the place would be more effective.

17           Concern for treatment of animals is commendable,  
18 and many people take many positive actions to protect  
19 animals. They volunteer at shelters. They rescue abused  
20 horses. They foster animals. They work for changes in the  
21 legislature. They try to raise awareness. They donate  
22 their money and their time. They do not commit arson.

23           Your attempt to shift the blame to Joseph Dibee  
24 for the Cavel West is as misguided as your attempt to shift  
25 the blame for the Oakridge Ranger Station to Jacob Ferguson.



1 This court is -- this court is to believe that your  
2 involvement in significant arson activities that caused  
3 millions of dollars of damage, cost people their jobs and  
4 livelihood was just a coincidence? I don't think so. That  
5 you found yourself driving to these scenes without the  
6 knowledge of what was to occur? I don't think so. Even  
7 though you obtained a fraudulent registration for your van,  
8 presumably to avoid detection? That you were unaware of the  
9 motivation of others in the arson of Superior Lumber, Rock  
10 Springs, U.S. Forest Industries, after you, yourself, were  
11 involved in numerous arson activities? You portray yourself  
12 almost as a victim of your friends that you couldn't say no  
13 to. Yet you were involved in more arsons than almost any  
14 other conspirator. To coin a phrase, give me a break.

15 As Ms. Page concisely stated, your actions were  
16 dangerous, reckless, and stupid. You will need to earn and  
17 deserve Ms. Page's love and respect, because I can only  
18 imagine how stunned she was to learn of your past actions.  
19 And it is laudable that she is standing by you. But you  
20 still have to earn that trust and respect back.

21 I understand you felt and hoped that these  
22 criminal events were behind you and that you could move on.  
23 Unfortunately, the victims of your illegal actions were not  
24 so lucky. They still feel the effects of your selfishness,  
25 misguided and criminal acts.



1           It is troubling that even now at your sentencing,  
2   you choose, really, again, not to truly step up and just  
3   simply own up to your responsibility. I see you still as  
4   minimizing. And you blame it on the entreaties of others  
5   and your loneliness. However, over one year before the  
6   arson of other targets, you and you alone targeted a dairy,  
7   constructed the incendiary device similar to those used in  
8   later arsons, and on Christmas Day, no less. Who can you  
9   blame for that action? The evidence shows that you were  
10   willing and able to take action on your own. The fact that  
11   Jacob Ferguson, or anyone else, encouraged you to do so does  
12   not lessen your responsibility or your culpability, and it  
13   is disheartening that you still fail to realize that.

14           So I'm going to walk through the guideline  
15   calculations.

16           I find the following guideline calculations apply  
17   to the offenses as grouped pursuant to 3D1.1.

18           Case No. 60-60070 [sic], Count 1, conspiracy.

19           Pursuant to guideline 3D1.2, conspiracy is grouped  
20   with the underlying substantive offense. Accordingly, the  
21   conspiracy count is grouped with the substantive offenses  
22   below.

23           Count 2, arson of the Oakridge fire station.

24           The base offense level for this offense is 6 with  
25   an upward adjustment of 15 levels for the amount of loss,

1 and two levels for more than minimal planning.

2 Further, 844(f)(2) is enumerated as a federal  
3 crime of violence, regardless of the 2001 amendments to  
4 2332b(g)(5)(B), and I find that the evidence clearly  
5 establishes that this offense created a substantial risk of  
6 harm, based on the size and location of the fire and the  
7 individual who occasionally slept there. I further find  
8 that the offense was calculated to retaliate against  
9 government conduct, specifically, actions of the forest  
10 service in their management of forest lands. The temporal  
11 proximity to defendant's participation in the Warner Creek  
12 protest is significant. Therefore, a 12-level enhancement  
13 will apply, making the offense level of 35.

14 Count 3, arson of Cavel West.

15 The base offense level for this offense is 6, with  
16 an upward adjustment of 13 levels for amount of loss under  
17 2B1.3(b)(1), and two levels for more than minimal planning  
18 under 2B1.3(b)(3).

19 I further find that the defendant played the role  
20 of organizer in identifying Cavel West as a target of arson,  
21 warranting a two-level upward departure -- upward  
22 adjustment.

23 The government contends that this offense  
24 qualifies for the terrorism enhancement because it was  
25 motivated to retaliate against the BLM's sale of wild horses

1 to slaughterhouses. If arson of the BLM horse corrals had  
2 occurred first, I would have no problem finding that clear  
3 and convincing evidence supported such a motivation.  
4 However, those arsons occurred after Cavel West, and the  
5 communique issued after this offense referred to the arson  
6 itself and putting the, quote, horse murdering plant out of  
7 business. Therefore, I find the government has not  
8 established that the offense was calculated to influence or  
9 affect the conduct of government by intimidation or coercion  
10 or to retaliate against government conduct, resulting in an  
11 offense level of 23.

12 Count 4, BLM Burns Wild Horse Facility.

13 The base offense level for this offense is 20.

14 Further, I find that the offense was calculated to  
15 influence, affect, or retaliate against government conduct,  
16 as evidenced by the communique issued afterwards describing  
17 the arson and horse release as efforts to stop the BLM's  
18 illegal and immoral practice of rounding up wild horses that  
19 eventually end up in the slaughterhouse.

20 The communique also states that the practice of  
21 grazing cattle on public lands must stop and encourages  
22 others to take action.

23 The only question is whether this court can  
24 consider this offense in violation of § 844(f)(1), a federal  
25 crime of terrorism, in light of the Patriot Act's 2001

1 amendment requiring that arson of government property must  
2 include a substantial risk of harm or death before it may be  
3 considered as a federal crime of terrorism.

4 It is difficult to find that there was a  
5 substantial risk of harm because of the remoteness of the  
6 corral and the fact that the fire was smoldering when  
7 discovered. Thus, the sole issue is whether the 2001  
8 amendments apply to this offense, even though the offense  
9 conduct was completed prior to the amendments.

10 In my opinion, I rejected defense counsel's  
11 argument that the amendments rendered the guidelines a,  
12 quote, revised edition.

13 I continue to reserve ruling on this issue, as  
14 defendant Thurston intends to submit further argument.  
15 Ultimately, whether this offense qualifies for the  
16 enhancement does not affect my sentencing determination in  
17 this case. Therefore, the offense level is 20.

18 Count 5, attempted arson of the U.S. Forest  
19 Industries.

20 The base offense level is 20.

21 The government maintains that this offense  
22 qualifies for the terrorism enhancement because the U.S.  
23 Forest Industries harvested timber from federal lands.  
24 However, the communique issued after this offense referenced  
25 the arson as, quote, retribution for all the wild forest

1 animals -- wild forests and animals, unquote, and that it  
2 was, quote, payback and a warning, unquote, to greedy  
3 companies.

4 I find that clear and convincing evidence does not  
5 establish that the offense was calculated to influence or  
6 affect the conduct of government by intimidation or  
7 coercion, or to retaliate against government conduct,  
8 resulting in an offense level, then, of 20.

9 Count 6, arson of Childers Meat Company.

10 The government agrees that this offense cannot be  
11 considered as a federal crime of terrorism. Therefore, I  
12 find that the base offense level is 6, with an upward  
13 adjustment of 13 levels for the amount of loss, and two  
14 levels for more than minimal planning, resulting in an  
15 offense level of 21.

16 Count 7, arson of the Eugene Police Department  
17 Public Safety Station.

18 Pursuant to 2K1.4(a)(2), the base offense level is  
19 20.

20 Further, 18 U.S.C. § 844(i) is enumerated under  
21 2332b(g)(5)(B), and based on the totality of the evidence,  
22 the only possible conclusion I can reach is that the  
23 defendant intended to retaliate against the conduct of  
24 government. Regardless of defendant's role, he is  
25 responsible for the conduct of others committed during the

1 commission of this offense. Even if this offense does not  
2 qualify as a terrorism enhancement because of the location  
3 and nature of the intended target, a police substation, I  
4 would exercise my discretion to depart upward under 5K2.0.  
5 Therefore, the offense level is 32.

6 Count 8, arson of Superior Lumber.

7 The base offense level for this offense is 6, with  
8 an upward adjustment of 13 levels for amount of loss under  
9 2B1.3(b) (1), and two levels for more than minimal planning  
10 under 2B1.3(b) (3).

11 The government contends that this offense  
12 qualifies for the terrorism enhancement because Superior  
13 Lumber harvested timber from federal lands.

14 However, the communique issued after this offense  
15 referenced Superior Lumber as, quote, a typical earth raper  
16 contributing to the ecological destruction of the northwest,  
17 unquote, and that the defendants hoped to, quote, see an  
18 escalation in tactics against capitalism and industry,  
19 unquote. It did not, however, mention any conduct of the  
20 government. Therefore, I find that the government has not  
21 established that the offense was calculated to influence or  
22 affect the conduct of government by intimidation, coercion,  
23 or to retaliate against government conduct, resulting in a  
24 base level offense of 21.

25 Counts 9 through 43, arson of Romania Chevrolet.



1           The base offense level for this offense is 6, with  
2     a 13-level upward adjustment for amount of loss, and a  
3     two-level upward departure for more than minimal planning.  
4     Further, 844(i) is enumerated as a federal crime of  
5     violence, and I find that the evidence clearly establishes  
6     that this offense was calculated to retaliate against  
7     government conduct, specifically, the arrest and prosecution  
8     of Jeffrey Luers for arson at the very same location. Even  
9     though defendant served as a driver, he is responsible for  
10    the conduct of his coconspirators during the commission of  
11    this offense. Therefore, a 12-level enhancement will apply,  
12    and the total offense level is 33.

13           Counts 44 through 56, arson of Jefferson Poplar  
14    Farm.

15           The base level for this offense is 6, with a  
16    13-level upward adjustment for an amount of loss, and two  
17    levels as an upward adjustment for more than minimal  
18    planning.

19           As I found with Mr. Meyerhoff, the statement in  
20    the communique reveals that the offense was intended to send  
21    a message to the government that legislation is ineffectual.  
22    As with the Romania Chevrolet offense, even though defendant  
23    did not participate in the actual offense, his relevant  
24    conduct includes the reasonably foreseeable actions of  
25    others taken during the commission of this offense. Thus, I

1 find that the purpose of the offense was to influence or  
2 affect the conduct of government.

3 Because 18 U.S.C. § 844(i) is identified as a  
4 federal crime of terrorism, a 12-level upward departure  
5 applies. Regardless, even if this offense did not qualify  
6 for the enhancement, I would exercise my discretion under  
7 United States Sentencing Guidelines 5K2.0 to depart upward.  
8 Therefore, the base level offense is 33.

9 Finally, I decline to impose the terrorism  
10 enhancement under the conspiracy count, given that I have  
11 imposed the enhancement or imposed upward departures based  
12 on group offenses.

13 Multiple count adjustment.

14 Pursuant to 3D1.4, the combined offense level for  
15 multiple counts is determined by taking the offense level  
16 applicable to the group with the highest offense level and  
17 increasing that offense level by a specific amount. In this  
18 case, the group with the highest offense level is 35. The  
19 offense levels of the remaining groups total four units, and  
20 the court must increase the offense level by four, resulting  
21 in a combined offense level of 39.

22 Upward departures.

23 Under the sentencing guidelines section 5K2.0, I  
24 have the discretion to depart where the guidelines do not  
25 adequately take into account aggravating circumstances of

1 the offense conduct. Here 3A1.4 does not adequately take  
2 into account the defendant's intent to frighten, intimidate,  
3 and coerce government and private individuals through his  
4 actions.

5 After the Childers Meat arson, the communicate  
6 warned that the conspirators will continue to target these  
7 operations and their insurance companies until they are out  
8 of business. These are powerful statements intended to  
9 coerce, frighten, and intimidate the owners of such  
10 businesses and the people who work there.

11 Likewise, the communiques after the Cavel West,  
12 Superior Lumber, U.S. Forest Industries, the Burns Wild  
13 Horse Corral arsons all described enjoyment or satisfaction  
14 in destroying property and encouraging or hoping that others  
15 would take similar actions.

16 Therefore, I exercise my discretion under 5K2.0 to  
17 depart upward by one level, resulting in a base offense  
18 level of 40. By upwardly departing only one level, I do not  
19 intend to minimize the nature of defendant's conduct.  
20 Rather, based on the grouping calculations, a one-level  
21 increase results in the same offense level had the terrorism  
22 enhancement applied.

23 Based on the agreements of the parties, the  
24 defendant will receive a three-level downward adjustment for  
25 acceptance of responsibility, resulting in an adjusted

1 offense level of 37.

2 Criminal history category.

3 The defendant has 0 criminal history points,  
4 resulting in a criminal history category of I. However,  
5 under 3A1.4, the defendant's criminal history category is  
6 established at a VI.

7 Therefore, based on an offense level of 37 and a  
8 criminal history category of VI, the guidelines range is 360  
9 months to life.

10 Do you have a motion, Mr. Engdall?

11 MR. ENGDALL: Yes, Your Honor.

12 The government would move for substantial  
13 assistance, a downward departure of 7 levels. I believe  
14 that gets us to a level 30, with a range of 168 to 210  
15 months, and we would recommend he be sentenced at the low  
16 end of that range, 168 months.

17 THE COURT: In addition, I have the discretion to  
18 depart downward pursuant to 5K2.0 for mitigating  
19 circumstances not taken into account under the guidelines.  
20 Therefore, I find that defendant's cooperation warrants a  
21 one-level downward departure for -- taking the 8 to a 9 for  
22 a total and final offense level of 29, with an applicable  
23 guidelines range of 151 to 188 months.

24 In addition to all the material that I read,  
25 everything that has been said today, I have not only gone

1 through and carefully, in an attempt to adequately address  
2 guidelines calculations that the court must make, I have  
3 also looked very carefully at all the consideration the  
4 court is to give 18 U.S.C. § 3553 regarding the nature and  
5 circumstances of these offenses; your own criminal history  
6 and your characteristics; the goals of sentencing, be it  
7 punishment, deterrence, rehabilitation, or public safety;  
8 and other factors that I believe are important in fashioning  
9 a sentence that is reasonable but not greater than necessary  
10 for these offenses.

11 And I have to tell you, it is profoundly, palpably  
12 sad to know that this is yet about the second of eight -- or  
13 a total of ten, eight more days to sit in this courtroom and  
14 watch wasted minds, people damaged, the community debate  
15 skewered sideways, the costs of putting you in a facility,  
16 whether it's minimum, maximum, or something in between. It  
17 is incredibly depressing, when you could be out there  
18 practicing random acts of kindness that would have had a  
19 tremendous impact in the debate.

20 Can you imagine if you had started a fund and  
21 purchased those horses and used them in a therapeutic way  
22 with kids with handicapped disabilities? Could you imagine  
23 if you had gone out to Greenhill, they are in desperate need  
24 of help, and offered to participate with your band of merry  
25 friends to provide shelter for all the animals that are not



1   cared for? Can you only imagine if you had gone out and  
2   educated people and purchased property and given it as a  
3   trust for generations to come? But instead, all these acts  
4   are destructive. It makes no sense.

5           And what strikes me is so many of you are smart  
6   people, and you had kind people in your life. Why couldn't  
7   kindness be your guide? Why couldn't education be your  
8   tool? It's a question I will think about the rest of my  
9   time on this bench. Random acts of kindness. I only wish  
10  the communiques that were coming out now talked about,  
11  that's the way we go. Stop destroying the earth to get a  
12  message across. Care for the earth. Care for one another.

13           So, taking all that into account, with regard to  
14  Count 1, you are committed to the Bureau of Prisons for  
15  confinement for a period of 60 months.

16           With regard to Count 2 through 56, you are  
17  committed to the Bureau of Prisons for confinement for a  
18  period of 151 months to be served concurrent with the  
19  sentence imposed in Count 1 and with each other.

20           Now, Mr. Engdall, would you -- I looked, and I  
21  probably should have been able to quickly reference the  
22  restitution amount in your -- the slides, but I wasn't able  
23  to do that. The figure that I have is \$10,652,533.

24           MR. ENGDALL: That is correct, Your Honor.

25           THE COURT: Is that the number?



1 MR. ENGDALL: We had an opportunity to visit with  
2 the parole and probation department, and that is an accurate  
3 figure. We'll accept that. Thank you.

4 THE COURT: All right.

5 You shall pay full restitution to the victims  
6 identified in the presentence report in the amount of  
7 \$10,652 -- \$652,533, jointly and severally with the  
8 codefendant, Stanley Meyerhoff, Chelsea Gerlach, Joseph  
9 Dibee, Daniel Gerard McGowan, Josephine Overaker, Suzanne  
10 Savoie, Nathan Block, Joyanna Zacher, and I will waive  
11 interest.

12 I know that over time, this is -- this figure  
13 probably will never be paid. But for the rest of your life,  
14 if you truly want to rehabilitate yourself, you will pay  
15 every month, and you will pay whether you are obligated to  
16 or not to pay back the damage that you caused.

17 In addition, you will be required to serve a  
18 three-year term of supervised release subject to the  
19 standard conditions and supervision requirements adopted by  
20 this court and upon the following special conditions:

21 You shall cooperate in the collection of DNA as  
22 directed by the probation officer if required by law.

23 I will recite, again, the restitution. You are to  
24 pay full restitution to the victims identified in the  
25 presentence report in the amount of \$10,652,533, jointly and

1 severally with Stanislas Meyerhoff, Case No. 60-60078 [sic];  
2 Chelsea Gerlach, 60-60079 [sic] and 60-60122 [sic]; Joseph  
3 Dibee, 60-60011 [sic]; Daniel Gerard McGowan, 60-60124  
4 [sic]; Josephine Overaker, 60-60011 [sic]; Suzanne Savoie,  
5 60-60080 [sic]; Nathan Block, 60-60123 [sic]; and Joyanna  
6 Zacher, 60-60126.

7           If there's an unpaid balance at the time that you  
8 are released from custody, it shall be paid at the maximum  
9 installment possible, but not less than \$200 per month or  
10 10% of gross income per month, whichever is greater.

11           You are prohibited from incurring new credit card  
12 charges or opening additional lines of credit without the  
13 approval of your probation officer.

14           You shall authorize release to the U.S. probation  
15 office any and all financial information by means of a  
16 release of financial information form or by any other  
17 appropriate means as directed by your probation officer.

18           Your employment shall be subject to approval by  
19 the probation officer.

20           You shall disclose all assets, liabilities to your  
21 probation officer, and you shall not transfer, sell, give  
22 away, or otherwise convey any asset with a fair market value  
23 in excess of \$500 without approval of the probation officer.

24           You shall have no contact with individuals known  
25 to be or have been involved in the environmental or animal

1 rights activism movement without approval of the court.

2 MR. FRIEDMAN: The only problem with that --

3 THE COURT: And I have read, because I hadn't just  
4 yet read Ms. Gerlach's statement and the arguments made by  
5 Mr. Weinerman on her behalf, that I don't have any problem  
6 if there's a submission of a list and they are well known  
7 organizations that the court can have ready access to  
8 information and can -- I will not infringe on their First  
9 Amendment rights to participate to the extent they can be  
10 involved in the -- say, for example, the Sierra Club or  
11 generalized Audubon Society or those sorts of organizations.  
12 I will have some discretion.

13 And believe it or not, I intend to be here when  
14 all of you come out so that I can ensure that when you start  
15 over out in the community, we are paying attention and that  
16 you are contributing, not taking from this community.

17 Is that clear enough?

18 MR. FRIEDMAN: Definitely. That addresses it,  
19 Your Honor.

20 THE COURT: I'm not imposing a fine. I'm making  
21 the finding you don't have the financial resources, nor an  
22 appreciable earning ability to pay the fine.

23 You are required by statute to pay the fee  
24 assessment in the amount of \$5,600.

25 You entered into a plea agreement which waives all

1 or part of your appeal rights. If you wish to file a notice  
2 of appeal, you may do so. If you cannot afford to do so,  
3 contact the clerk's office. It will be done for you and  
4 done for free, but it must be done within ten days and will  
5 be governed by your plea agreement.

6 I don't recall seeing a recommendation for  
7 placement. I will, on behalf of any defendant requesting  
8 the -- a letter, I will do letters regarding placement. And  
9 very frankly, I'm going to write strong language that each  
10 and every one of them should be put to work in programs  
11 providing education to those who are less fortunate.

12 MR. FRIEDMAN: With regard to placement, Your  
13 Honor, we would like to do a little bit of research and be  
14 able to advise the court within a week.

15 THE COURT: I don't have a problem with that. And  
16 I'm sorry. Mr. Purdue and Mr. Blasher would make themselves  
17 available if the probation office can be of any help, and  
18 I'm not certain any of us can, but you are more than welcome  
19 to call them.

20 Anything else? Did I miss anything, Mr. Engdall?

21 MR. ENGDALL: No, Your Honor. Thank you.

22 MR. FRIEDMAN: No, thank you.

23 THE COURT: Mr. Tubbs, good luck.

24 THE DEFENDANT: Thank you.

25 THE CLERK: Court is in recess.

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*(The proceedings were concluded this  
24th day of May, 2007.)*

1 I hereby certify that the foregoing is a true and  
2 correct transcript of the oral proceedings had in the  
3 above-entitled matter, to the best of my skill and ability,  
4 dated this 27th day of August, 2007.

5  
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7 \_\_\_\_\_  
8 Kristi L. Anderson, Certified Realtime Reporter

